| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Carlos Yep; Mike Manning; James Devine |
| **Cc:** | John Kim |
| **Subject:** | 2017 09 11 OFHP Outstanding Business Issues v02.pptx |
| **Date:** | Friday, September 15, 2017 1:49:25 PM |
| **Attachments:** | 2017 09 11 OFHP Outstanding Business Issues v02.pptx |

---

Hi

I have few minor edits/comments. You may want to take a quick look slide #5 re the methodology for establishing the interest rates on the sub debt. Since John is coordinating you can provide comments to him.

Thanks

Ken K

# OFHP Business Issues

DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - The Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including:
  - A regulation to minimize Payments in Lieu (PILs) of taxes by the financing entity
  - An equity injection by the Province to OPG that OPG would use to lend to the financing entity
  - A subordinated debt agreement related to OPG lending to the financing entity

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as financial services manager will be a Trust
- The Trust would be subject to tax under the Income Tax Act (Canada) (ITA) and the Ontario Taxation Act, 2007 (TA)
- The beneficiary of the Trust will be a corporation that will be directly or indirectly wholly-owned by OPG
  - The corporation, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - ~~PILs are used by the OEFC to help pay down the stranded debt of the former Ontario Hydro~~
- In order to mitigate the cost to ratepayers, the Province plans to bring forward a regulation under the *Electricity Act* that would exempt the corporation from paying PILs
- The Province will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financing Entity

**Next Steps:**

- Draft letter from the Minister of Finance to OPG in development that will provide comfort that the financing entity will be exempt from PILs
- The Ministry of Finance is working with OPG on a draft regulation which will be brought forward in the Fall

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to keep its capital structure in line, and will require flexibility in order to issue shares as needed
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year
  - On a monthly/quarterly basis, OPG will send a notice of share subscription to the Province, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG is seeking Board approval on September 29th
- The Province is working with appropriate parties internally to ensure a mechanism is in place to provide the equity injection to OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement which outlines the terms of the subordinated debt
- Interest rates on the subordinated debt will be established as follows:
  - During the Trust short term financing period when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying ~~Government of~~ Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate.

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement which is tracking to be finalized by the end of September

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Carlos Yep; James Devine |
| **Cc:** | Mike Manning; Ronald Kwan; John Kim; John Psinas |
| **Subject:** | 2017 09 29 OFHP Business Issues v01.pptx |
| **Date:** | Sunday, October 01, 2017 1:04:09 PM |
| **Attachments:** | 2017 09 29 OFHP Business Issues v01.pptx |

---

Pls see my comments, Carlos/Jim you may also want to add to mine.

Thanks

Ken k

# OFHP Business Issues

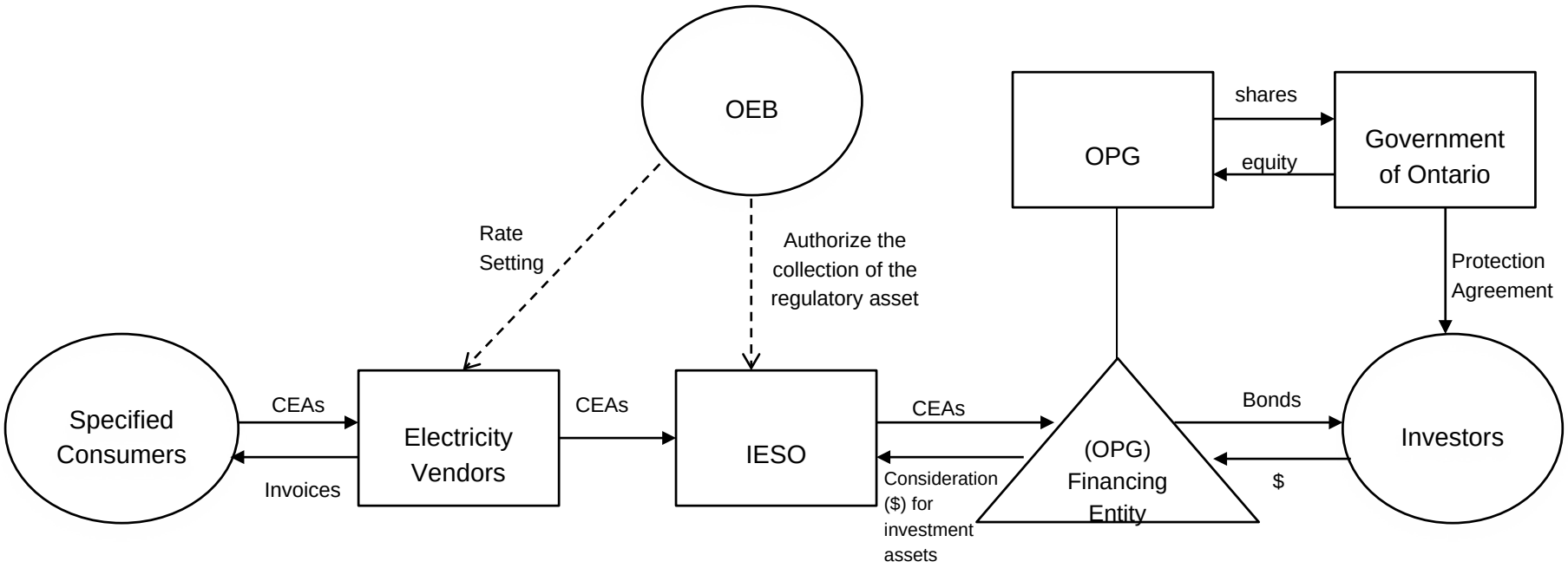
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - The financing entity will purchase the regulatory asset, effectively financing the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including:
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
    - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Province has agreed to provide a protection agreement that supports the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would take over the funding obligations of the Financing Entity, including:
    - Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
    - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
    - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
    - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access US market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
    - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
    - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its accounting objective of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 10 basis points on monthly funding obligation when the annual funding obligation is less than $10B, and 8 basis points on the monthly funding obligation when the annual funding obligation is greater than $10B.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust)
- The Trust would be subject to tax under the Income Tax Act (Canada) and the Ontario Taxation Act, 2007
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG
  - Subco, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down its debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the Ministry of Finance plans to bring forward a proposed Minister of Finance's regulation under the *Electricity Act* , 1998 that would exempt Subco from paying PILs on income received as beneficiary of the Trust
- The Ministry of Finance will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financial Services Manager

**Next Steps:**

- Draft letter from the Minister of Finance to OPG is in development that will provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which will be brought forward in the Fall

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Veinot, Cindy (TBS); Tom McKinlay (MAG); Thouin, Alena (ENERGY); Malle Hanslep (MOF); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman |
| **Subject:** | Adherence Process for Change of Law Protection Agreement \| OFA, OPCD, MOF, Legal Counsel |

---

Please call Hresa at 5-8002 upon arrival

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Veinot, Cindy (TBS); Tom McKinlay (MAG); Thouin, Alena (ENERGY); Malle Hanslep (MOF); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | Adherence Process for Change of Law Protection Agreement \| OFA, OPCD, MOF, Legal Counsel |

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

Please call Hresa at 5-8002 upon arrival

**From:** LEE John -TREASURY
**To:** Mike Manning
**Cc:** LADAK Lubna -TREASURY; LAURETA LAPIRA May -TREASURY; RYFA Ken -TREASURY
**Subject:** Charts that may be helpful for your discussion with the Lawyers.
**Date:** Friday, November 10, 2017 3:38:56 PM

---

Figures 1 and 2 illustrate the FHP Program's financing profile over the next 30-year period.

**Figure 1: Fair Hydro Trust Debt Balance**

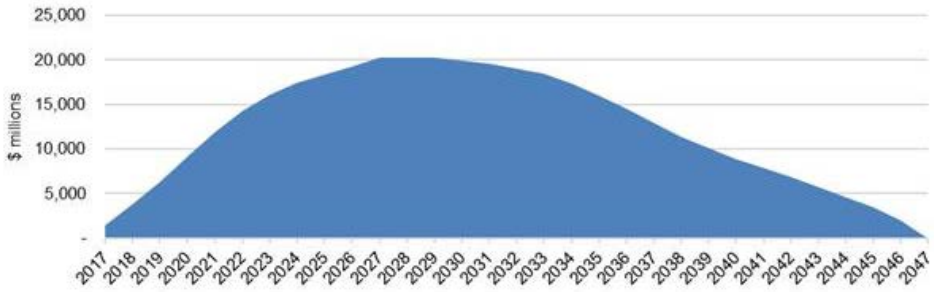



**Figure 2: Fair Hydro Trust Borrowing and Repayment Profile**

Borrowing for Rate Reductions Borrowing to Offset Interest Interest & Fees Principal Repayment

The Fair Allocation Amount is a net amount, either positive or negative, equal to the difference between the following:

1. estimated costs of clean energy initiatives without adjustment; and
2. a re-profiling of the costs in item 1) plus:
    a. the estimated operating and financing costs of the FHP Program, and
    b. the repayment of the readjustment amount.

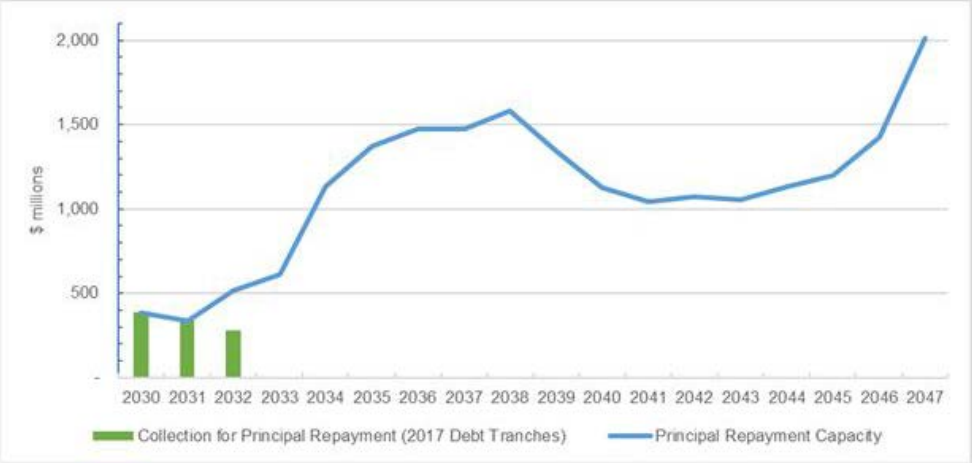
A negative Fair Allocation Amount in any reference period generally represents a period of borrowing, and a positive Fair Allocation Amount generally represents a period of principal repayment.

1. **Term to Maturity of Funding Obligations**

The forecast debt profile for the Trust based on the current Fair Allocation Amount received from the Province at the end of September 2017 indicates that principal repayments can commence in 2030 (see Figure 3) . However, the principal repayment amount for this year is expected to be relatively small at approximately $400 million for the year or about $200 million for each six-month reference period. Accordingly, principal repayment of the 2017 debt tranches is expected to commence in 2032 when the cumulative principal repayment amount reaches approximately $1 billion, which indicates a minimum term for the initial debt issuance of 15 years (i.e. 2017-2032). Subsequently, principal repayment increases to approximately
$1.5 billion annually or $0.75 billion for each reference period by around 2035 allowing for larger single maturities.

Clean energy adjustments for 2030 and 2031 will be collected in a reserve account. A sizeable senior notes issuance with the same term of about $500 million, representing 51 percent of approximately $1 billion in required financing will be necessary to attract investors and create liquidity as compared to having smaller less liquid individual debt tranches for years 2030 and 2031.

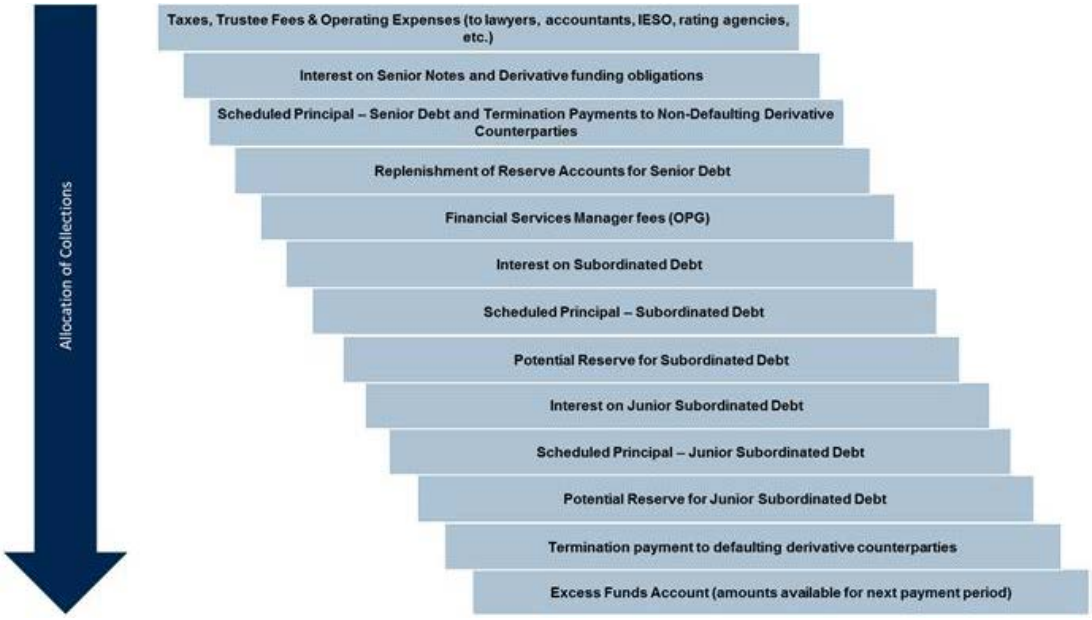
**Figure 3: Principal Repayment Profile Based on Current Fair Allocation Amount**




1. **Application of Recovery Amounts to Funding Obligations**

The Master Trust Indenture outlines the payment priorities for the Trust's receipt of cash flows. Figure 4 below summarizes the significant components of the waterfall.

**Figure 4: Waterfall for Cash Collection**




Payment Priorities

On each payment date, all amounts on deposit in the collection account will be paid out in the following order of priority:

1. to pay (A) all taxes exigible for which a governmental authority is given priority over the specified creditors under the laws of the applicable jurisdiction, and then (B) fees, expenses and reimbursements owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount of ■ percent To be confirmed. of the outstanding principal amount of all funding obligations at such time;to pay (A) interest, fees and other amounts owing in respect of senior debt and
   (B) amounts payable to derivative counterparties other than termination payments;
2. to pay (A) principal owing in respect of senior debt to the extent required to satisfy any payment of principal; and (B) termination payments owing to derivative counterparties where the derivative counterparty is not the

defaulting party or the sole affected party;

3. to deposit or transfer to any reserve account in respect of senior debt, the amount required pursuant to the applicable funding obligation agreement;
4. to pay fees, expenses, reimbursement and indemnity amounts owing to OPG;
5. to pay interest, fees and other amounts owing in respect of subordinated debt;
6. to pay principal owing in respect of subordinated debt to the extent required to satisfy any payment of principal;
7. to deposit or transfer to any reserve account related solely to subordinated debt the amount required pursuant to the applicable funding obligation agreement;
8. to pay interest, fees and other amounts owing in respect of junior subordinated debt;
9. to pay principal owing in respect of junior subordinated debt to the extent required to satisfy any payment of principal;
10. to deposit or transfer to any reserve account related solely to junior subordinated debt the amount required pursuant to the applicable funding obligation agreement;
11. to pay termination payments owing to derivative counterparties where the derivative counterparty is the defaulting party or the sole affected party; and
12. to be held in the collection account for distribution in the above order of priority on the next payment date; or (ii) after all funding obligations have been paid and discharged, and all other amounts have been paid in full, to pay to the Trust.

Key Activities

The following table outlines the key activities required to execute the first purchase of the investment asset:

| Activity | 2017 Timeline |
|---|---|
| Rating Agencies Assessment | End of November |
| Marketing & Roadshow | Last week of November – 1st week of December |
| Term Debt Closing & Funding | 1st – 2nd week of December |
| Warehouse Facility Closing & Funding | 2nd week of December |

**John Lee | Vice President Treasurer |**
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Daniel Cayley (ENERGY) |
| **Cc:** | Steen Hume (CAB); VINER, JON; PRESTAGE, JA |
| **Subject:** | Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement |
| **Date:** | Friday, November 03, 2017 7:08:14 AM |
| **Attachments:** | Change of Law Protection Agreement and Change of Law Process Agreement.msg<br>23239361-vpdf-CLPA - Process Agreement.PDF<br>23239360-vpdf-CLPA - Protection Agreement.PDF |

---

Hi.
After our meeting yesterday, we made the changes identified in the attached blacklines and sent the clean versions to Torys (transmittal email is included below, sent Thursday at 9 p.m. ET).
Please note that these revised versions delete a number of the “Notes” we had previously included for your consideration and our follow-up. Those deletions do not necessarily mean that an issue has been resolved, but rather we thought it best to not identify certain of those deleted items in the external circulation. Our work to resolve those open items will be on-going.
As discussed, Mike or Ken will be sending a follow-on email to OPG to emphasize that these drafts represent an advanced consideration of what the Province is able to do, that the drafts have moved considerably towards OPG’s proposed approach, and that only comments on critical issues will be appropriate given the limited time available. You will see that my cover email to Torys suggested that the next step should be for the Province to receive a consolidated mark-up that reflects all essential inputs (i.e., OPG, E&Y, Dealers, Osler and ideally rating agencies) and then to have an all-hands business meeting to resolve any outstanding points. It would be helpful if a similar approach is proposed in Mike’s/Ken’s follow-on email.
Please feel free to call if you have any questions or concerns.
Regards, Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m’en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
**To:** Feldman, Michael [mfeldman@torys.com]; Ramchandani, Rima (rramchandani@torys.com) [rramchandani@torys.com]; Mansoori, Nina (nmansoori@torys.com) [nmansoori@torys.com]; Hill, Krista (khill@torys.com) [khill@torys.com]
**CC:** Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]; Tom McKinlay (MAG) [Tom.McKinlay@ontario.ca]; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) [Alena.Thouin@ontario.ca]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Thursday, November 02, 2017 21:02:15
**Attachment 1:** 23239361-v7-CLPA - Process Agreement.DOCX
**Attachment 2:** 23239360-v9-CLPA - Protection Agreement.DOCX

---

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act, have been done.

---

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

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

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

### 2.01 Deliveries to the Province

(a) Not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.

(c) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional of replacement Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]

### 2.02 Covenants

(a) OPG shall, as the FSM, cause the Financing Entity to:

[2] Note: The tax documents to be provided to the Province are under consideration.

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(c) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast setting out OPG's expectations regarding the aggregate maximum amount of

Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction

in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or

instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate, and each shall use its best efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity, permitting

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement);

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made; or

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**[5]

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] Note: To be confirmed if required.

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any

other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved

Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated

Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under

the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY

HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

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

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

---

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Collection Account in Satisfaction**

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[5].

---

[3] Under consideration.

[4] This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.

[5] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03].

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

**3.01 The Indenture Trustee**

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

**3.02 Acceptance of Trusts**

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things,

[6] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

**4.03 Evidence of Satisfaction**

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

**5.01 Assignment and Subrogation**

Upon paying an amount in respect of an Approved Obligation:

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[8]

[7] This concept needs to be reflected in the Trust Indenture.

[8] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[9] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

**7.02 Not Responsible for Recitals or Issuance of Notes**

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

**7.03 Representations and Covenants of the Indenture Trustee**

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM or the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for [Financing Entity]
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.08 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

---

[10] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] Note: To be confirmed if required.

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

[12]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and (b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the Financing Entity's receipt of amounts in respect of its Investment Interest and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM ~~[~~established~~]~~ the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program ~~Agreement~~Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act ~~and the OIC~~, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated~~,~~ Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

### 2.01 Deliveries to the Province

(a) Not less than ■15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) ~~Not~~Unless the Financing Entity is subject to the PILs Regime, not less than ■15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. ~~Thereafter~~ In addition, OPG shall promptly deliver written notice to the Province ~~a copy~~ of any ~~proposed change to or replacement of such~~change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.

(c) Not less than ■10 Business Days prior to (i) any proposed change~~, addition~~ or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, ~~addition or~~ supplement to the Transaction Document and any such additional of replacement Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax ~~assessment~~assessments not more than ■10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[~~1~~2]

### 2.02 Covenants

(a) OPG shall, as the FSM, cause the Financing Entity to:

[~~1~~2] Note: The tax documents to be provided to the Province are under consideration.

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, ~~not less than ■~~on the earlier of (i) one Business ~~Days~~Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to ~~the~~such Primary Obligation:

(a) the material terms of the ~~Funding Obligations~~Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, ~~pricing and third party fees;~~[2]interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

[2] ~~Note: Level of detail required by the Province is under consideration. Province to consider whether it would like further details regarding Principal Obligations, Redemption Obligations, Interest Obligations, Hedging Obligations, Third Party Expense Obligations or Other Funding Obligations. In desirable, particulars regarding Hedging Obligations and the market in which notes are issued to be considered.~~

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) ~~if the Primary Obligation is a [borrowing],~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) ~~has been provided to the Province in accordance with Subsection 2.01(c); and~~is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(c) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed ~~disclosure document~~Disclosure Document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast

setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has ~~irremovably~~irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or ~~the~~any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict

with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within ■20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate, and each shall use its best efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

the Financing Entity for the provision of on-going services to the Financing Entity, permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement);

(b) any representation or ~~warrant~~warranty made by OPG in this Agreement, ~~or~~ any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made; or

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG ~~at its option~~, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide ~~notice~~a Suspension Notice to the Indenture Trustee ~~that a Breach Event has occurred and,~~, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement~~, that the Limited Guarantee does not and will not apply to any Primary Obligations that may thereafter be incurred or amended by or on behalf of the Financing Entity.~~[5].

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

[5] ~~NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.~~

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**[5]

~~[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.]~~

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____

Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____

Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" ~~means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services~~has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Administrative Services Agreement**" ~~means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity~~has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

~~"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.~~

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

[6] Note: To be confirmed if required.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

~~"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation [as of the date of this Agreement].~~

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" ~~means the management agreement dated [■], 2017 between the Manager and the Financing Entity~~has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Manager**" ~~means OPG, in its capacity as manager of the Financing Entity under the Management~~has the meaning ascribed thereto in the Change of Law Protection Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"~~**Supplemental Reserve Account**~~**Substantially in the Form**" has the meaning ascribed thereto in ~~the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and

priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], ~~2017, as amended, supplemented, restated or otherwise modified from time to time.~~2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

Document comparison by Workshare Compare on Friday, November 03, 2017 6:38:01 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/6 |
| Description | TOR_2528-#23239361-v6-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/7 |
| Description | TOR_2528-#23239361-v7-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 73 |
| Deletions | 54 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 131 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations ~~secured~~, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM ~~[~~established~~]~~ the Financing Entity as a "financing entity"~~[1]~~ (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which

~~[1] Note to Draft: Consideration is being given by MOE to possible changes to the Regulation to accommodate the proposed use of a "trust", as a "financing entity".~~

the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days

comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (~~a~~i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (~~b~~ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section ~~1.18~~1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and ~~[~~(ii) amounts required to be deposited by or on behalf of the Financing

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] ~~Note:~~ Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary ~~Obligation~~Obligations and an "investment interest" is therefore crucial~~. Unfortunately, the nexus is not straightforward~~. Blakes is considering how to more precisely connect these concepts.

Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.][3]

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][4][3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

[3] Note: OFA to confirm whether the Limited Guarantee will extend to require the Province to fill sinking fund and collateral accounts during the period when the Province is required to make payments. If not, then we will need to consider the impact on ratepayers and the potential impact on the CEA calculations, which will have been based originally on these deposits being made during particular reference periods.

[4] Province to advise on extension of a tax gross up. We assume this is necessary, although we have not discussed it specifically and it may be that we delete this provision on the basis that the determination of a tax gross up (and the Province's liability for it) will be based on the inclusion of that concept in the Trust Indenture itself[3] Under consideration.

## 2.04 Payment into Collection Account in Satisfaction

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[54] Upon a payment having been made by or on behalf of the Province into the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[65].

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

## 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

[54] ~~Note:~~ This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently. ~~To be discussed with Torys.~~

[65] ~~Note:~~ Consider ~~if~~how Beneficiary rights under Obligations Secured ~~can in fact be affected in this way~~will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee ~~insofar as the Beneficiaries rights against the financing entity are to be affected~~under this Agreement.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03].

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) ~~if the Primary Obligation is a [borrowing][7],~~ at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[~~8~~6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under

[7] ~~Under consideration. Need to ensure that non-conventional instruments (capital rather than debt) are caught in the maximum test.~~

[8] ~~Note: The~~[6] Use of the concept of "repayments" under the OFHPA ~~take account of contemplated refinancings. There is some risk that an anticipated refinancing would not manifest as contemplated, in which case the amount financed (and subject to the Limited Guarantee) could exceed the Protection Agreement Maximum and result in a balloon payment obligation~~for this purpose is under consideration.

Approved Obligations,[9] do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, ~~not less than ■~~one Business ~~Days and not more than ■ Business Days~~Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, ~~not less than ■~~one Business ~~Days and not more than ■~~Day prior to the earlier of (i) one Business ~~Days~~Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. ~~if the Primary Obligation is a [borrowing],~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided ~~notice~~a Suspension Notice to the Indenture Trustee ~~that a Breach Event has occurred and that the Limited Guarantee does not apply to any further Primary Obligations that are incurred.~~[10], the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the

[9] ~~Note: If certain financing entity obligations are guaranteed under a one-off agreement, the interaction between the one-off guaranteed amount and Approved Obligations that are looked at to determine if incurrence of a new Primary Obligation is within the Protection Agreement Maximum will need to be considered.~~

[10] ~~NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.~~

applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

### 5.01 Assignment and Subrogation

Upon paying an amount in respect of an Approved Obligation:

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (~~a~~i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (~~b~~ii) the benefits of the related Collateral and (~~c~~iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the

extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

### 5.03 Voting Rights under "Outstanding Notes"

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[11][7]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

### 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity [and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[12][8]

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

TheFollowing the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

[11][7] Note: This concept shouldneeds to be reflected in the Trust Indenture to be effective. Additional scenarios where the Province's rights as an affiliate of OPG may differ from what is expected are to be identified in the underlying Program Agreements.

[12] Note:[8] General Regulation mustto be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use ~~[commercially reasonable~~best efforts~~]~~ to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.~~13~~9

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

~~13~~9 ~~Note:~~ Further details regarding obtaining of third party consents and rating agency approvals to be considered.

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

**8.01 Suspension Notice**

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM ~~to~~or the Province ~~and~~to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic

communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]

c/o Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for [Financing Entity]
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**9.06 Confidentiality**~~

~~[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. Note that this Agreement will become part of the package of rights acquired by investors and counterparties and so it is unclear to what extent confidentiality can or should be preserved in these circumstances.]~~

**9.06 ~~9.07~~ No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 ~~9.08~~ Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.08 ~~9.09~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[14]10 in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, or any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

[14]10 Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] Note: To be confirmed if required.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are ~~[, or the office of the Indenture Trustee is,]~~ authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation ~~[as of the date of this Agreement]~~.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act ~~[as of the date of this Agreement]~~.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act ~~[as of the date of this Agreement]~~.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act ~~[as of the date of this Agreement]~~.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section ~~1.18~~1.19(a).

[12]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and ~~[~~(b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.~~]~~[15]

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.[16]

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

~~[15] Note: Possible simplification of definition structure under consideration.~~

~~[16] Note: An alternative would be to expressly state the Program Agreement Maximum amount and the process by which this amount is determined in this Agreement.~~

(v) ~~there is~~the implementation of a change in the organization or structure of the IESO or Ontario's electricity market[17] undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction ~~[in a final and non-appealable judgement]~~[18](i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ~~ability of~~Financing Entity's receipt of amounts in respect of its Investment Interest and (ii) issues a decision or an order preventing the Financing Entity ~~to receive~~from receiving amounts on its Investment Interest ~~so that it can~~, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured~~.~~ that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section ~~1.18~~1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

~~[17] Note: Consider more clarity to "Ontario's electricity market".~~
~~[18] Under consideration to assess the marketability implications of this phrase.~~

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

Document comparison by Workshare Compare on Friday, November 03, 2017 6:38:58 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/8 |
| Description | TOR_2528-#23239360-v8-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/9 |
| Description | TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 86 |
| Deletions | 120 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 206 |

**From:** Francesca.Bungaro-Yemec@ontario.ca on behalf of Imbrogno, Serge (ENERGY)

**To:** Martin Schlaepfer (MOF); Francesca Bungaro-Yemec (ENERGY); Steen Hume (CAB); Hilary Cox (ENE); Murray, Maud (ENERGY); Thouin, Alena (ENERGY); Joseph Pau (MEDTE/MRI); "jeffrey.lyash@opg.com"; catriona.king@opg.com; HOILETT Rosemarie -PRESIDENT; Rosemarie Leclair; "Neil Brodie"; Sarah Branco; Gadi Mayman; Anna Strathy; Hresa Gavaris; Ken Kandeepan; Mike Manning

**Subject:** DM Meeting | OFHP Fees Regulation

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Subject:** | Discussion of OPG's Proposed Adherence Terms \| OFA, OPCD, MOF, Legal Counsel |
| **Attachments:** | 12917730-v1-Questions (Adherence Conditions).docx |

---

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

or
Please call Hresa at 5-8002 upon arrival

**Confidential legal advice subject to solicitor-client privilege**

October 23, 2017

**Questions for MOE and OFA to consider regarding OPG's Proposed Adherence Terms**

A. Scope of Province's Obligations under the Change of Law Protection Agreement (**CLPA**)

1. On a Protection Event, should the Province become responsible for the payment of taxes (if any) owing by the Financing Entity?

2. On a Protection Event, should the Province become liable to pay amounts owing by the Financing Entity to OPG (e.g., FSM fees and expenses)?

3. On a Protection Event, should all available funds (e.g., funds accumulated in sinking funds) be immediately applied to reduce the amount that the Province would be liable for under the CLPA?

4. Should the Province set a "Protection Agreement Maximum" (previously called the "Program Maximum") that measures and relates only to "principal amounts"? In other words, should the limitation be tied only to principal obligations, while the Province's actual obligations would automatically extend, without specific quantum limits, to the other payment obligations under "funding obligations" (e.g., interest, swaps, standby liquidity commitment fees, servicer fees and expenses)?

5. Is the Province comfortable guaranteeing contingent obligations (e.g., indemnity obligations) of the Financing Entity? If so, should the Province require that such contingent obligations be "capped" within the funding obligation itself or should the exposure of the Province be otherwise limited under the CLPA?

6. Should the Province be required to deposit funds to meet sinking fund or collateral deposits (i.e., deposit obligations incorporated in the financing structure on the basis that the "clean energy" cash flows will service the obligations, rather than the Province), notwithstanding that the Province would have become primarily liable for payment obligations under the CLPA?

B. Adhesion

7. Is the Province okay splitting the maximum exposure limitations and "process-related" matters (see below) into a separate agreement - away from the terms of the agreement under which the Province's payment obligations would bind the Province opposite the Indenture Trustee? OPG proposes this in order to keep the optics of the CLPA as simple and straightforward as possible. In other words, is the Province prepared to leave all of the important details regarding what OPG is supposed to do before incurring an obligation that binds the Province to a side agreement with OPG, that is opaque to the Indenture Trustee and Underwriters at the time a funding obligation is incurred and not requiring any third party to have notice or regard to the Province's requirements?

8. OPG proposes that delivery of an officers' certificate to a third party, in OPG's capacity as FSM, will in and of itself bind the Province under the CLPA. That certificate would simply indicate that the Province is bound under the CLPA with respect to the specified funding obligation. It would not be addressed to the Province (although a pre-closing certificate is contemplated to be delivered to the Province) and the "Protection Agreement Maximum" concept would not be incorporated as a specific condition (other

than to the extent that OPG is bound to the Province under the side agreement with the Province). Is this acceptable to the Province? Does this raise any governance/authority issues for the Province (e.g., limit on incurrence needing to be specifically confirmed at closing? scope of permitted delegation to bind? FAA compliance?)

C. "Protection Agreement Maximum" (formerly "Program Maximum" (**PAM**)

9. OPG proposes that the PAM will be determined based on a mechanical calculation and without any real discretion on the part of the Province to set or object to the PAM. Is this acceptable to the Province?

10. OPG's proposed mechanical process to determine PAM would be based on OPG's 24 month forecast (estimate) of payments to be made by the Financing Entity. So long as that forecast (and any refresh) is consistent with the "Financing Plan" (also prepared by OPG) and is "reasonably expected to align with the fair allocation amount", the Province will be required to accept the PAM based on OPG's forecast – i.e., no discretion to reject or modify the aggregate amount of the Province's commitment initially or from time to time. Is the Province prepared to tie its CLPA obligation automatically to the operation of the OFHPA in this way, without review and with perpetual effect?

11. Is the proposed mechanical link to the OFHPA calculations consistent with the OIC or other governance requirements applicable to the Province's authority to approve the CLPA?

12. Is the initial 24 month forecast period appropriate (e.g., 2.5B x 2 – large)? Is OPG's proposed refresh of the PAM (mechanically tied to the new forecast), 9 to 12 months prior to the end of the 24 month forecast period, appropriate?

D. "Process-Related" Matters

13. Assuming the Province is okay with the arrangements described in question 7, above, we would envision a mechanism where the Province could give the Indenture Trustee notice of a breach (if known) by OPG of the PAM or process-related side agreement, and that such a notice would have the effect of cutting off the application of the CLPA for any future incurrences unless the Province further agrees otherwise. Does the Province agree that this sort of failsafe is essential? Note that OPG's suggestion has been that no pre-incurrence non-adherence/failsafe provision be provided, in order to allow the Province to provide notice that the CLPA will not apply to a pending/proposed incurrence.

14. Does the Province need to contemplate other scenarios where the CLPA would become ineffective in respect of future incurrences, such as:

    a. an OPG change of control

    b. a policy-based determination by a future government

    c. an unanticipated circumstance, such as the incurrence by the Financing Entity of assessed tax liabilities, indemnity payments, "increased costs", rating downgrades, offering disclosure-based claims, defaults under the program,

insolvency of a major counterparty (e.g., swap counterparty or services provider), etc.

d. a discretionary circumstance where the Province decides it no longer wishes to be liable under the CLPA?

We expect that OPG would push back so that any suspension of new obligations by the Province would not hamper OPG's ability to complete an anticipated/needed refinancing.

15. Does the Province have any reservations about letting OPG at any time provide a binding certificate to third parties regarding adherence, which would be determinative of the Province's obligations. What conditions for this sort of certificate would make sense (e.g., preview and consent by the Province)? Does this proposal raise any governance/authority issues for the Province (e.g., scope of delegation; FAA compliance)?

16. If the Province is prepared to be liable for taxes owing by the Financing Entity (see question 1, above), what oversight, assurances, documentation and reporting regarding the potential for entity-level taxes should the Province require (if any)?

17. OPG is proposing that the Province will receive a certificate prior to the Financing Entity incurring a funding obligation, that sets out "the material terms of the funding obligations pertaining to the principal amount, pricing and third party fees". Is that a sufficient amount of detail, or would the Province like to specifically itemize its information expectations, to cover things such as:

    a. details respecting any principal obligation, such as:

        i. the amount, timing and conditions of repayments (including any redemption or extension rights)

        ii. the basis for OPG's expectations regarding the availability of any related refinancings

        iii. any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the principal obligation

        iv. the rating (if any) contemplated to be attributed to the principal repayment of the funding obligation

        v. details respecting any redemption rights, including the nature and conditions applicable to any exercise and OPG's expected basis for determining whether or not to exercise a redemption right, option or privilege;

    b. details respecting interest obligations, such as:

        i. the anticipated interest or discount rate or rates (including default rates)

        ii. the timing/frequency/conditions of coupon payments

iii. any required deposits to be made into a finance reserve account or supplemental account

iv. the availability of any funding rebates in order to provide for payment of interest

v. the rating (if any) contemplated to be attributed to the interest obligation;

c. details respecting any hedging obligation (e.g., interest or FX swaps, options or other derivatives), such as:

i. the name of the counterparty and credit details

ii. the credit ratings (if any) of the payor(s)

iii. the risks sought to be mitigated by the derivative

iv. anticipated circumstances (if any) in which the derivative may not achieve such mitigation or be subject to early termination

v. whether collateral posting requirements will apply;

d. details respecting other funding obligations, such as:

i. the payee

ii. the timing and any conditions of payments

iii. any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations

iv. in the case of a contingent obligation (e.g., indemnities), the nature and extent of any contingency affecting the payment obligation, the circumstances in which a payment obligation may arise and any specified maximum claim amount

e. assuming that the Province would be liable for capital, reserve or supplementary account deposit obligations (see question 6, above), details respecting the schedule for such deposits and the conditions for the application of such amounts to pay such amounts and the related priorities for application.

18. OPG (and presumably OPG's accountants) is contemplating that the Province will be provided transaction documentation "in substantially final form" and that the Province will not be entitled to provide input "other than in its capacity as obligor under the [CLPA]". In other words, assuming that the CLPA is signed in advance, the Province will have no real opportunity to comment on the forms of transaction documents to be used, and will

have a limited opportunity to "not accept" [1] the documentation. Can the Province live with these limitations?

19. The proposed OPG certificate (pre-incurrence) would include an attestation by OPG regarding the use of pre-reviewed documentation. The test for conformity of the to-be-used documentation, compared to the pre-reviewed documentation, would focus only on whether "the covenants of the Financing Entity are no more onerous in any material respect" and that the "events of default" are consistent "in all material respects". Is the limited scope of this conformity test acceptable, or should it be broadened and cover specific items such as:

    a. no differences in the timing of or circumstances under which payments are or may become due (for example, as a result of any termination, wind-up, liquidation or realization)

    b. no differences that could affect the Province's rights of subrogation or interests as a subrogee

    c. with respect to the anticipated form of series specific documents (as opposed to the upfront terms of program-wide "master" documents), confirming that the variable terms set forth in the proposed documents are as reasonably contemplated in the reviewed forms, having regard to such matters as:

        i. the type of instrument to be issued (i.e., debt (bullet vs. amortizing), equity-linked, pass-through instruments, etc.)

        ii. the scope of the related obligations (e.g., redemption or extension features or other optionality)

        iii. the extent of the related obligations (e.g., limited recourse features, limitations on indemnities, etc.)

        iv. the timing, conditions and circumstances in which payment obligations may arise,

    but making it clear that conformity would not include a comparison to the particular financial terms, rates, levels and parameters of the obligations other than if the reviewed forms specify specific requirements, limitations or parameters.

20. How much time is sufficient for the Province:

    a. to do an initial review of the main transaction documentation (including forms of series-specific documents), which would set the acceptable pattern for future

---

[1] Note that the proposed OPG language is not crystal clear that the Province can reject the reviewed documentation, which we expect is merely drafting, but that will need to be confirmed assuming the Province wishes to work within the OPG/Tory mark-up.

issuances? The proposal is 15 BDs, although that does not seem to make sense given that OPG proposes that the Province must confirm acceptance of the terms within 15 BDs of receipt of the documentation

b. to do a review of any changes to the main transaction documentation (including forms of series-specific documents), which would reset the acceptable pattern for future issuances? The proposal is to receive proposed amendments at least 15 BDs prior to first use, and the Province would confirm acceptance of the terms within 15 BDs of receipt of the documentation

c. to review applicable details of a proposed funding obligation in advance of an incurrence (proposal is 10BDs)?

21. What other items should be incorporated into the timeline from the Province's perspective?

E. Information, Reporting and Other Covenants

22. OPG proposes to provide the Province with an applicable "Financing Plan" only after an incurrence. Does the Province need to see this document as it is issued and changed, rather than only after the time of an incurrence?

23. OPG proposes to provide the Province with any actual offering/disclosure documents only after it is used. Does the Province need to have input into offering/disclosure document before use or dissemination (e.g., the description of the CLPA)?

24. OPG has limited its negative covenant on elections by the Financing Entity following a Protection Event to actions that would accelerate obligations. Should this be broader to cover extensions or other consensual changes that could affect the obligations (e.g., creditor concessions).

F. Parties

25. Will it be sufficient for the CLPA (and any procedural side-letter) to be signed by OPG, acting solely in its capacity as "financial services manager" (i.e., with OPG's liability being limited by the terms of the related management or administrative agreement)? How does this interplay with any other indemnities or exculpatory provisions that the Province is anticipating for OPG (corporate) and its officers?

26. Who from OPG should sign the officer's certificate? The OPG proposal is 2 "executive officers".

27. OPG proposes that a failure to comply with the PAM or "approval process" will not result in any breach. Assuming that OPG is in fact proposing that its failure would have no consequences, including as between the Province and OPG whatsoever, are the process aspects of the OPG proposal even meaningful to the Province?

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Subject:** | Discussion of OPG's Proposed Adherence Terms \| OFA, OPCD, MOF, Legal Counsel |

A continuation from October 26

| | |
|---|---|
| **From:** | Nelms, Scott (MOF) |
| **To:** | Gadi Mayman |
| **Cc:** | Steen Hume (CAB); Mike Manning; Ronald Kwan |
| **Subject:** | Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 12:18:21 PM |
| **Attachments:** | Blackline_24180663v1 - 24180663v3.pdf |
| **Importance:** | High |

---

Hi Gadi,
I hope NYC is going well and you are finding air conditioning.
We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.
Thanks for your help,
Scott

**CONFIDENTIAL**
**FOR DISCUSSION PURPOSES ONLY**

# ONTARIO REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

## FEES

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"comparison fees" means ~~typical fees~~**market comparable fees, expressed as a per annum percentage rate,** charged by ~~[service providers?~~**asset** managers~~?]~~ ~~in Ontario~~ **in Canada and any other jurisdiction as may be determined by the Board** for services that are similar to the services provided by the Financial ~~Service Manger~~**Services Manager** under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds ~~in Ontario~~,

(b) the scope of the services provided, ~~and~~

(c) the level of the services provided**, and**

**(d) the amount of assets under management**;

**"forecast interest rate" means, in respect of each tranche of funding obligations, an interest rate forecast to be applicable to such tranche of funding obligations after taking into account (i) the interest rate for debt of or guaranteed by the Province of Ontario with a corresponding term or duration, (ii) the estimated credit spread for such tranche of funding obligations with a comparable term and based on the type of instrument and risk of the issuer, and (iii) anticipated fees and commissions expected to be payable in connection with the issuance of such tranche of funding obligations.**

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year~~, other than any refinancing~~;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances**, as** at **12:00 am on** the ~~start~~**first calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities,

2

B = the sum of the balances**, as** at **11:59 pm on** the ~~end~~**last calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to **the management and administration of financing entities and the investment asset, including in relation to** funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) ~~For the purposes of subsection 19 (3) of the Act, fees may be~~**Out-of-pocket costs and expenses of the financing entities incurred by the Financial Services Manager on behalf of the financing entities and for which the Financial Services Manager is entitled to reimbursement under a** management agreement with **such financing entity shall not constitute a fee** established and charged by the Financial Services Manager ~~to financing entities for the recovery of costs and expenditures, as provided for in section 7.~~**under subsection 19(3)**

**of the Act.[1] The costs and expenditures of the financing entities referred to in this subsection (3)** may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations**;**

2. **Banking fees, including structuring fees or work fees;**

3. Fees of issuing and paying agents for funding obligations**;**

4. **Fees of trustees;**

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns**;**

6. Fees of legal counsel**;**

7. **Rating agency fees; and**

8. Filing or registration fees.

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those provided for under this ~~R~~egulation.

**Base fee, 2018 and 2019**

**3.** Subject to section 5.1, the base fee for a month in the ~~year~~**calendar years** 2018 **and 2019** shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation greater than $10 billion**

**4.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~**2019** if the average annual funding obligation for the preceding year was greater than $10 billion.

**[1] These represent third party costs and expenses of the financing entity, not part of the fees that OPG is charging the financing entity. From time to time, OPG may have to pay these upfront costs on behalf of financing entities but they will be a pass-through cost for which OPG would simply be reimbursed by the financing entity. Other than OPG's fees, the costs and expenditures of financing entities are not subject to OEB review under the Act but rather are recoverable as expenses through the CEA (and through IESO during the moratorium). Subsection (3) in this draft was added for greater certainty to ensure there was no misunderstanding.**

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation $10 billion or less**

**5.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~2019 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

4

B = the average monthly funding obligation for the preceding month.

**Board review of base fee**

**5.1** If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee. If the Board refuses to approve the proposed base fee submitted by the Financial Services Manager under section 9, the Board shall provide its reasons for such refusal and ~~may~~ make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees~~.~~ and based on the methodology used in the formulas set out in section 3, 4 and 5.

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula~~:~~ (which in respect of individual tranches may result in a negative number):

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite the circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

**Board review of variable fee** 5

**6.1** If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is ~~[unreasonable]~~**not consistent with market comparable forecast interest rates**, the Board may refuse to approve the proposed fee**. If the Board refuses to approve the proposed variable fee submitted by the** Financial Services Manager **under section 9, the Board shall provide its reasons for such refusal** and ~~may~~ make recommendations to the Financial Services Manager regarding the forecast interest rate that is ~~reasonable.~~**consistent with market comparable forecast interest rates.**

~~**Fees for costs and expenditures**~~

~~**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.~~

~~(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:~~

~~1. Underwriters or selling agents for funding obligations.~~

~~2. Banking fees.~~

3. ~~Fees of issuing and paying agents for funding obligations.~~

4. ~~Fees of trustees.~~

5. ~~Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.~~

6. ~~Fees of legal counsel.~~

7. ~~Filing or registration fees.~~

8. ~~Fees of any third party independent consultants required to be retained under the Act.~~

~~**Board review of fees for costs, expenditures**~~

~~**7.1** If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.~~

**Charging of fees**

**8.** (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee is a negative amount, it shall be deducted from the base fee payable in the following calendar year in twelve equal monthly instalments.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

**Submissions to Board re fees**

**9.** (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section ~~5.1, 6.1~~**5.1** and ~~7.1~~**6.1.**

(2) The first submission **for proposed fees to be charged for a two year period commencing in 2018** shall be made no later than [October 31, 2017].

(3) ~~The submission for each calendar year starting with 2019~~**Submissions for proposed fees to be charged for a two year period commencing in 2020 and for every two year period thereafter** shall be made no later than [120 days] before the start of the **applicable two** year **period**.

(4**) Submissions to amend the proposed fees for a month in any year following approval of the proposed fees for any two year period may be made from time to time but no more frequently than once in any 12 month period and no later than 120 days before the start of the year in which such fees are proposed to be effective.**

**(5**) If the Board makes recommendations as described in section ~~5.1, 6.1~~**5.1** or ~~7.1,~~**6.1,** the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees;

(b~~)~~ ~~a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;~~

(~~c~~) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered; **and**



(~~d~~**c**) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations~~; and~~**.**

(~~e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities]~~ **6) Until the Board has approved the fees in respect of any two year period, the fees approved for the prior two year period shall remain in effect.**

**Board approval, general**

**10.** (1) ~~The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.~~

~~[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]~~

~~(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.~~(3) For the purpose of determining whether to approve a proposed fee~~,~~ **described in section 5.1 or 6.1,**

**(a)** the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee~~.~~**; and**

(~~4) For the purpose of determining whether to approve a proposed fee,~~ **b)** the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

[OLC Note re DEFERRAL ACCOUNT:
1. You included the following instruction that would require the FSM to establish a deferral account -- what is the authority for imposing this requirement? Recall that in subs. 34 (1) of the Act, the Board is given authority to require that the FSM maintain specific accounts.

2. ENE LSB note: *Necessity of this provision to be discussion with the OEB given that fees will be recovered as a financing entity expense through the Fair Hydro program and not as part of the fees to be approved by the Board.*]

*[If needed, deferral provision could be along the following lines: The Financial Services Manager shall establish a deferral account in connection with subsection 19 (3) of the Act that records costs incurred by the Financial Services Manager in providing services referred to in section 1 during the period from July 1, 2017 to the day before the date of the Board's first order under subsection 19 (3) of the Act.]*

[OLC Note re FINANCE AMOUNT: You included the following instruction, but I think this more properly belongs somewhere in section 5 of O. Reg. 206/17? In fact, are these fees not already covered in that section (perhaps under "financing entity expenses"?). Please confirm: *Fees established by the Financial Services Manager and approved by the Board, and any applicable taxes on such fees, shall be included in the definition of "expenses" for the purposes of determining finance amounts under the Act.*]

*[Notes Re: Determining Fees:*

*(1) An alternative approach involves the Board approving the initial base fee and variable fee, with any changes to those fees being triggered by the FSM submitting to the Board proposed amendments to those fees (or the Board triggering a review on its own initiative (not more than once per year). However, because interest rates (and hence forecast interest rates) change over time (and can change even within a year), consider whether variable B of the variable fee should be approved annually. Similarly, because trends for "market comparable fees charged by service providers for similar services" change over time, consider whether variable A of the base fee should be approved annually.]*

*(2) Once every three years after the Board has approved the fees submitted by the Financial Services Manager under section 3, or more frequently if the Board requires but not more frequently than annually, the Board may require the Financial Services Manager to engage, on behalf of and at the cost of the financing entities, a third-party independent consultant to review and advise as to the appropriate benchmarks and range of values for [annual rates?] used for the purpose of determining the base fee and forecast interest rates used for the purposes of determining the variable fee and shall give due consideration to such advice.]*

**Commencement**

**x. This Regulation comes into force on the day it is filed.**

Document comparison by Workshare Compare on September-23-17 6:39:45 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/1 |
| Description | #24180663v1<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/3 |
| Description | #24180663v3<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 58 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | John Kim |
| **Cc:** | Mike Manning; John Psinas; James Devine; Carlos Yep |
| **Subject:** | Energy call this afternoon |
| **Date:** | Thursday, November 16, 2017 10:06:39 AM |

---

Hi John

It would be useful if Energy would share the draft Financing plan from OPG before the call.

Thanks

Ken k

**From:** Carlos Yep
**To:** Mike Manning; James Devine; Ken Kandeepan; John Kim
**Cc:** Anis Hirani
**Subject:** FHP Fees

---

CM boardroom# 416-325-8136

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | Tim Christie (ENERGY); LAURETA LAPIRA May -TREASURY; LADAK Lubna -TREASURY |
| **Subject:** | FHP Financing Plan and Execution Plan - Nov 16.docx |
| **Date:** | Thursday, November 16, 2017 9:45:54 AM |
| **Attachments:** | FHP Financing Plan and Execution Plan - Nov 16.docx |

---

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

# FAIR HYDRO TRUST
# FINANCING PLAN

[November] 2017

DRAFT

## Table of Contents

**A. Background** ..... 3
1. Financing Entity – Fair Hydro Trust ..... 4
2. OPG's Duties and Responsibilities ..... 5
3. Fair Allocation Amount and the Financing Plan ..... 6
**B. Principles and Assumptions of the Financing Plan** ..... 9
1. IESO Deferral for Future Months ..... 9
2. Future Transfers of Portions of the IESO's Regulatory Asset ..... 9
3. Term to Maturity of Funding Obligations ..... 9
4. Refinancing ..... 11
5. Cash Flow Requirements ..... 12
6. Current Funding Options and related Terms and Conditions ..... 12
7. Currency and Interest Rate Hedging Programs ..... 14
8. Fair Hydro Trust Costs and Expenditures ..... 14
9. Interest Rates ..... 14
10. Financing Reserve and Capital Accounts ..... 16
11. Indemnifications ..... 17
12. Financial Services Manager's Fees ..... 17
**C. Other Considerations** ..... 18
1. Market ..... 18
2. Application of Recovery Amounts to Funding Obligations ..... 18
3. Risk Mitigation Strategies ..... 20
4. Tax Minimization Strategies ..... 20
**D. Execution Plan for the Inaugural Debt Issuance** ..... 21

DRAFT

## A. Background

In June 2017, the Province enacted the *Ontario Fair Hydro Plan Act, 2017* (the Fair Hydro Act or the Act), to establish a framework under which the costs and benefits associated with the Government of Ontario's (the Province) clean energy initiatives are to be fairly allocated between present and future consumers of electricity under Ontario's Fair Hydro Plan (Fair Hydro Plan or FHP). The Act requires the Ontario Energy Board (OEB) to set rates that reduce average electricity bills for specified consumers by 25 percent commencing on July 1, 2017. The total bill reduction of 25 percent is comprised of an 8 percent reduction of the Provincial portion of the harmonized sales tax, with the remaining 17 percent achieved by decreasing energy rates for specified consumers paying the Regulated Price Plan rate and providing a global adjustment reduction credit for other specified consumers. The reduction in electricity bills will result in a shortfall in the Independent Electricity System Operator's (IESO) collections, which will need to be financed in order to pay the underlying global adjustment costs (GAC). The objective of the Fair Hydro Plan Program (FHP Program) is to refinance a portion of the deferred GAC over a longer period.

Under the Act, OPG is appointed as the Financial Services Manager (FSM) and is given the authority to, among other things, establish and manage one or more financing entities to raise debt financing (referred to as "funding obligations") for the purposes of the Act. The Act requires the Minister of Energy (MOE) to calculate the Fair Allocation Amount and for the FSM to incur funding obligations that, subject to refinancing, reasonably align with the Fair Allocation Amount, as adjusted by any readjustment amount.

The following attendant regulations were enacted in support of the Act:

- *Ontario Regulation 206/17 General* (General Regulation) provides details on specific requirements of the Act, in particular, the requirements for the Financing Plan.
- *Ontario Regulation 195/17 Fair Adjustment* provides details on rate reductions up to April 30, 2019 for specified consumers under the Act.
- *Ontario Regulation 196/17 Invoicing Requirements* provides details on information to be included with the invoice for specified consumers under the Act.

Under sections 21(1) and 21(2) of the Act, OPG, as FSM, has an obligation to prepare a Financing Plan in accordance with the Act and regulations, and to deliver it to the Minister of Energy. Under section 21(6) of the Act, the FSM has the right to amend the Financing Plan from time to time, without affecting any Clean Energy Adjustment that has already been determined or any funding obligations that have already been incurred before the amendment.

This Financing Plan was prepared based on the information available to, and the views of, OPG at the time this Financing Plan was prepared (or amended, as applicable). This Financing Plan also includes forward-looking information, which is subject to change. Actual outcomes and results may differ materially from what is expressed, implied or forecasted due to, but not limited to, changes in underlying assumptions relating to the Fair Allocation Amount, interest rates, investor interest, market capacity, market conditions, and credit rating assessments. References made to the "current Fair Allocation Amount" pertains to the Fair Allocation Amount received by OPG from the MOE at the end of September 2017. Terms that are capitalized and not defined herein have meanings ascribed to the same terms as in the Act or in the General Regulation. All amounts presented are in Canadian dollars.

## 1. Financing Entity – Fair Hydro Trust

Trustees

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

In **[**November**]** 2017, OPG as FSM, appointed BNY Trust Company of Canada, as the third party indenture trustee (BNY or Indenture Trustee). The Indenture Trustee will be acting on behalf of all specified creditors, who are all persons who may have contractual claims against the Trust under the FHP Program agreements contemplated by the Master Trust Indenture (MTI) governing the debt issued by the Trust.

Unitholders

The Trust will carry on activities for the benefit of its unitholders outlined below:

**Table 1: Fair Hydro Trust Unitholders**

| Unitholder | Number of Units Held |
|---|---|
| FHP2017 Inc., a wholly-owned subsidiary of OPG | 1,000,000 |
| BNY, as Indenture Trustee | 1 |
| Total Units Outstanding | 1,000,001 |

Trust Capitalization Structure

The Trust will be 100 percent debt financed and the contemplated source of funding is summarized in Table 2.

DRAFT

**Table 2: Type and Source of Debt Funding**

| Tranche and Debt Type | Source of Funding | % of Total Funding Requirement |
|---|---|---|
| Tranche A<br>Senior Debt | Capital Markets | 51% |
| Tranche B<br>Subordinated Debt | OPG via Province | 39% |
| Tranche C<br>Junior Subordinated Debt | OPG via Province | 5% |
| | OPG via Capital Markets | 5% |

The Trust will issue senior debt in the capital markets to finance 51 percent of the total funding requirement related to the deferred GAC (Tranche A). The financing platform was developed to allow the Trust access to both the Canadian and United States (US) markets in order to optimize pricing, provide flexibility, and market capacity. Further details on the types of financing that can be utilized are outlined under the heading *Current Funding Options*.

Through periodic equity injections in OPG, the Province is expected to provide 44 percent of the total funding requirement throughout the duration of the FHP Program. OPG will invest the proceeds from the equity injections into the Trust, with 39 percent in Tranche B as subordinated debt and five percent in Tranche C as junior subordinated debt.

OPG will invest the remaining five percent of the total funding requirement in Tranche C as junior subordinated debt, using internally generated funds or proceeds raised from debt issuances from the public markets.

## 2. OPG's Duties and Responsibilities

Financial Services Manager under the Act

OPG, as FSM, will perform its duties and responsibilities under the Act and its attendant regulations. These include, but are not limited to, the following:

- Establish one or more financing entities to incur funding obligations for the FHP Program
- Prepare a written Financing Plan to be used by OPG to evaluate the incurrence of funding obligations to acquire and finance a portion of the GAC deferral
- Ensure that funding obligations are incurred in a manner that is consistent with the Financing Plan
- Forecast the cash flow requirements of the financing entities
- Determine the monthly Clean Energy Adjustment for a particular ~~r~~Reference ~~p~~Period
- Administer the Investment Asset on behalf of the financing entities
- Establish and charge fees to the financing entities to recover costs and expenditures and to earn a return
- Seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of similar size and type

- Apply debt proceeds to purchase an Investment Interest or repay or redeem outstanding debt
- Consider the interests of specified consumers with respect to stable and predictable electricity rates
- Deal with related parties on arm's length terms
- Fulfil various reporting requirements to stakeholders

Manager under the Management Agreement

OPG has also entered into a management agreement with the Issuer Trustee, on behalf of the Trust, whereby all of the powers and duties of managing the Trust have been delegated to OPG as the manager. The duties and responsibilities associated with this role includes:

- Determining whether to incur funding obligations to acquire an Investment Interest or to refinance existing funding obligations;
- Negotiating and entering into program agreements;
- Maintaining accounts and banking records;
- Preparing any offering documents furnished by the Trust to prospective purchasers of funding obligations; and
- Preparing financial statements and tax filings on behalf of the Trust.

OPG's entitlement to fees, as FSM, is subject to the payment priorities outlined in the MTI and summarized in Section C, *Application of Recovery Amounts to Funding Obligations,* Figure 5. The FSM is not entitled to resign from its duties or terminate the management agreement as long as funding obligations remain outstanding. OPG may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the MTI.

## 3. Fair Allocation Amount and the Financing Plan

The Fair Allocation Amount, including the readjustment amount, is an amount calculated under the Act and the regulations by the MOE for every ~~r~~Reference Pp~~p~~eriod over the term of the FHP Program. It is intended to allocate the estimated Clean Energy Costs and Clean Energy Benefits fairly among specified consumers.

The FSM is required to prepare a Financing Plan under the Act to evaluate whether funding obligations should be incurred by the Trust. OPG is to have regard to certain prescribed principles (outlined in detail in Section B below), including that funding obligations should be incurred so that the estimated Finance Amount that would become due and payable during a ~~r~~Reference ~~p~~Period will, subject to refinancing, reasonably align with the Fair Allocation Amount determined in respect of such ~~r~~Reference Pp~~p~~eriod, as adjusted by a readjustment amount where applicable. In other words, the Financing Plan should contemplate the issuance of funding obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by specified consumers to ensure that they are bearing their fair share of the costs of providing Clean Energy benefits. The Act also provides that each funding obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

Figures 1 and 2 illustrate the FHP Program's financing profile over the next 30-year period.

**Figure 1: Fair Hydro Trust Debt Balance**

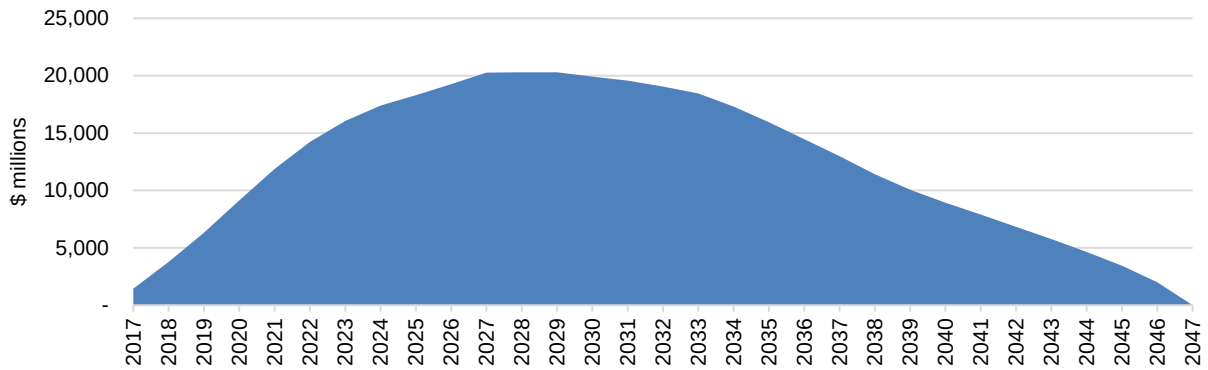
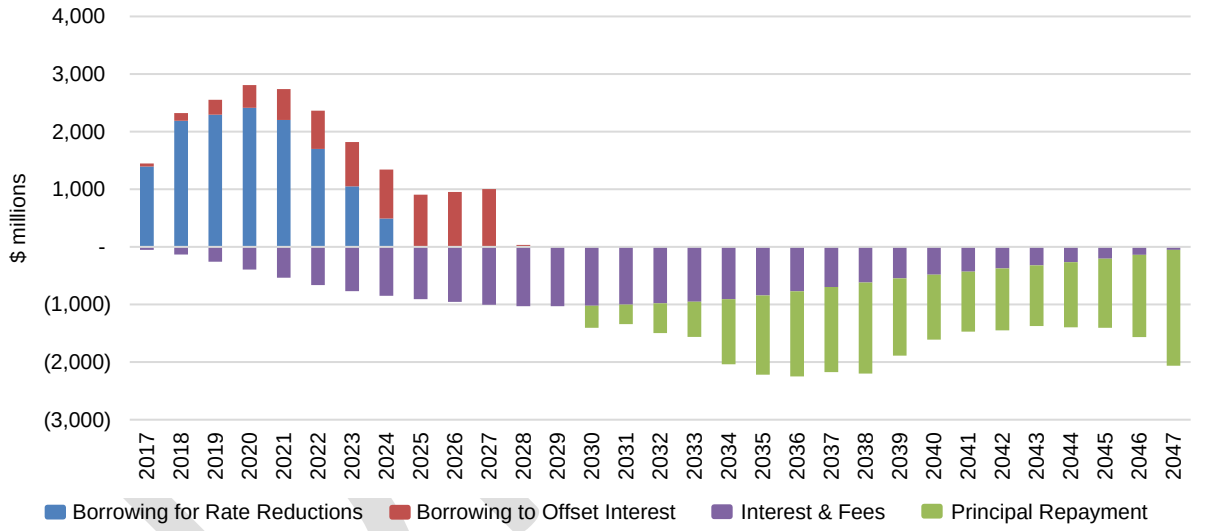



**Figure 2: Fair Hydro Trust Borrowing and Repayment Profile**




The Fair Allocation Amount is a net amount, either positive or negative, equal to the difference between the following:

1) estimated costs of clean energy initiatives without adjustment; and
2) a re-profiling of the costs in item 1) plus:
    a. the estimated operating and financing costs of the FHP Program, and
    b. the repayment of the readjustment amount.

A negative Fair Allocation Amount in any ~~r~~Reference P~~p~~eriod generally represents a period of borrowing, and a positive Fair Allocation Amount generally represents a period of principal repayment.

In a ~~r~~Reference ~~p~~Period when the Fair Allocation Amount is negative, the operating and financing costs of the FHP Program are shown in the Fair Allocation Amount calculation as an

increase in the debt of the FHP Program. This treatment is equivalent to increasing the amount of the deferred GAC by providing specified consumers with a higher rate reduction. The repayment of the related debt is included in the Fair Allocation Amount calculation to establish that all debt will be repaid by the end of the FHP Program. During these periods, operating and financing costs of the FHP Program are considered to align with the Fair Allocation Amount as long as these costs do not exceed the corresponding components in the Fair Allocation Amount calculation in any ~~r~~Reference ~~p~~Period by more than +/- 15 percent. If these costs exceed the corresponding components of the Fair Allocation Amount by more than +/- 15 percent, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount. Variability in costs is expected throughout the FHP Program as the Fair Allocation Amount was calculated on a forecast basis. Accordingly, any variability that is less than +/-
15 percent is deemed to be within an acceptable range.

Assessment for Reasonable Alignment

The Act stipulates that the Financing Plan must reasonably align with Fair Allocation Amount. This requirement is expected to be achieved through the consistent application of the following methodology, guidelines, and steps throughout the term of the FHP Program:

- Maintain a financial model that captures the funding obligations requirements of the Trust. Translate the funding requirements into expected cash flows by determining the related interest amounts, reserve requirements, fees, principal repayment, and the Trust's operating costs. This exercise will be performed for each ~~r~~Reference ~~p~~Period over the term of the program.
- Determine and assess the following:
    - For ~~r~~Reference ~~p~~Periods when the Fair Allocation Amount is negative, determine whether the forecast cash flow requirements is less than or equal to the financing and operating costs reflected in the Fair Allocation Amount as additional debt of the Trust. If the forecast cash flow requirements exceed the addition to the debt in the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
    - For ~~r~~Reference ~~p~~Periods when the Fair Allocation Amount is positive, determine whether the forecast cash flow requirements is less than or equal to the Fair Allocation Amount. If the forecast cash flow requirements exceed the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
- Due to the timing of the collection of cash flows, the General Regulation contemplates the use of reserve accounts. Provisions for reserves are excluded from the reasonable alignment assessment as these amounts are required to allow the Trust to incur the funding obligations. In addition, the reserve balances will be credited to specified consumers at the end of the term through the true-up mechanism if they are not required to satisfy terms of any funding obligation agreements pursuant to the MTI. Refer to *Financing Reserve and Capital Accounts* for more information on reserve accounts.
- Utilize and apply an accrual methodology when determining costs of the program, except for debt issuance costs, principal repayments, and reserve requirements.

DRAFT

The FSM will establish a methodology for assessing reasonable alignment at such time when a new Fair Allocation Amount letter is received from the MOE.

## B. Principles and Assumptions of the Financing Plan

This section outlines the various principles and assumptions that guided the development of this Financing Plan in accordance with the Act and section 14 of the General Regulation. The same principles and assumptions will apply to all subsequent revisions of the Financing Plan, if required.

The FSM is required to make reasonable assumptions regarding the following matters:

### 1. IESO Deferral for Future Months

The FSM will base its expectation of the IESO deferrals on the most current version of the Fair Allocation Amount and readjustment amounts provided by the MOE. Actual IESO deferrals and forecasts of near term deferrals, if available, will be used to guide forecast deferrals over the next quarter.

### 2. Future Transfers of Portions of the IESO's Regulatory Asset

The Trust anticipates periodic purchases of Investment Assets from the IESO when the cumulative balance of its regulatory assets is large enough to be financed and when effective financing options are available to the Trust. The market capacity for both long-term and short-term debt financing will also be key elements to consider when determining the most cost efficient option.

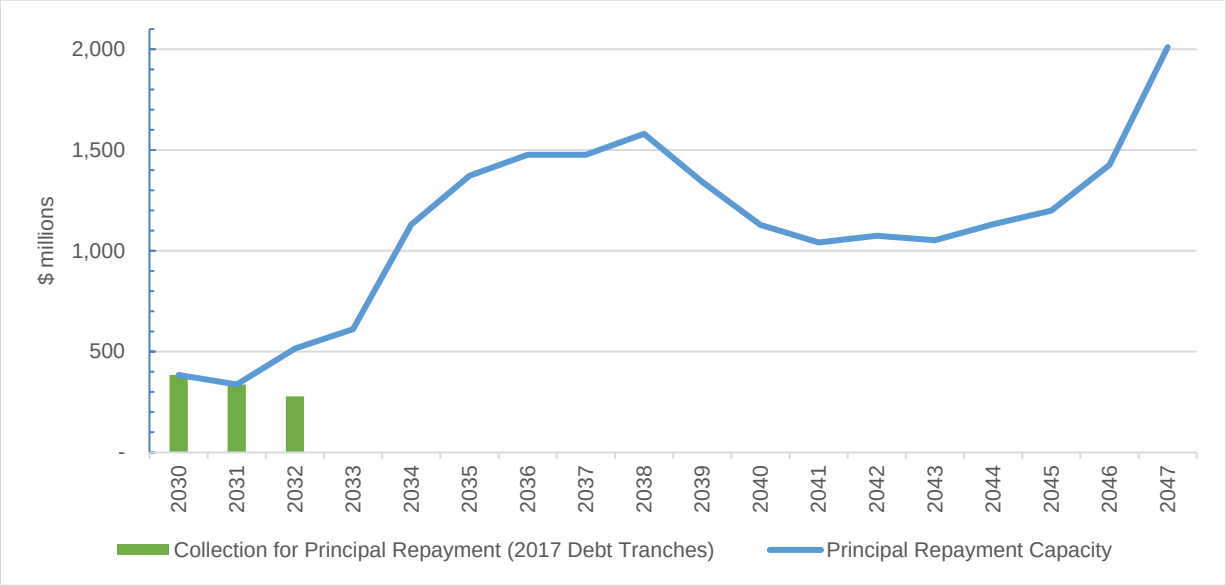
### 3. Term to Maturity of Funding Obligations

Initial Debt Tranche – 2017 Borrowing

The forecast debt profile for the Trust based on the current Fair Allocation Amount received from the Province at the end of September 2017 indicates that principal repayments can commence in 2030 (see Figure 3). However, the principal repayment amount for this year is expected to be relatively small at approximately $400 million for the year or about $200 million for each six-month ~~r~~Reference ~~p~~Period. Accordingly, principal repayment of the 2017 debt tranche is expected to commence in 2032 when the cumulative principal repayment amount reaches approximately $1 billion, which indicates a minimum term for the initial debt issuance of 15 years (i.e. 2017-2032). This offering is expected to include $500 million of senior notes, which is a sizeable amount to ensure sufficient liquidity and marketability. Subsequently, principal repayment increases to approximately $1.5 billion annually or $0.75 billion for each ~~r~~Reference P~~p~~eriod by around 2035 allowing for larger single maturities.

DRAFT

**Figure 3: Principal Repayment Profile Based on Current Fair Allocation Amount**



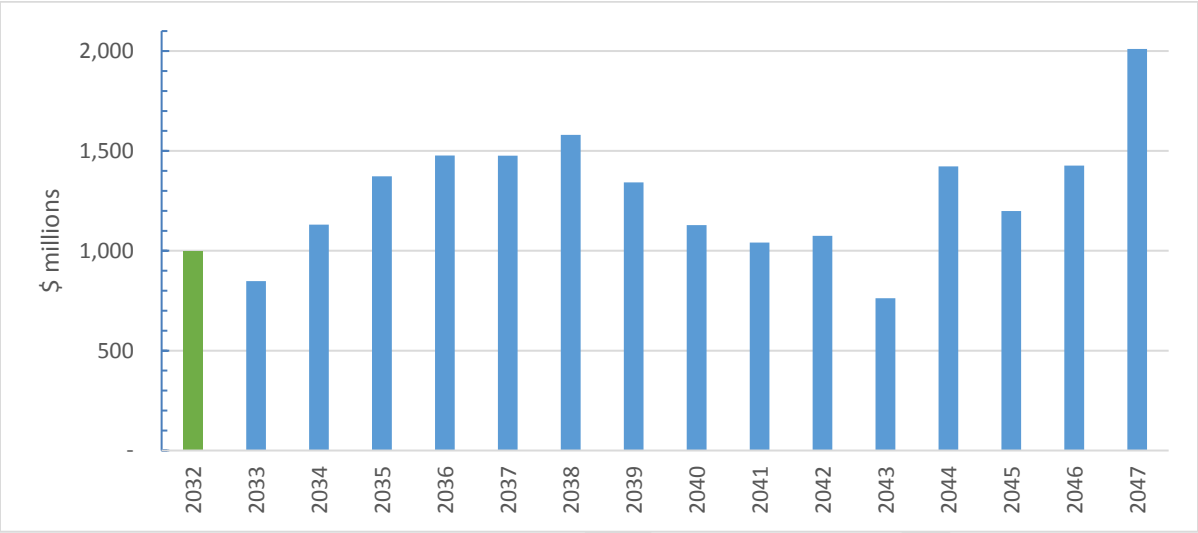

This length of term for an asset-backed security (ABS) has no ~~is un~~precedence ~~ted~~ in the Canadian market where terms are typically 10 years or less. Therefore, it is expected that a higher premium will be required to attract investors. Refer to Table 3 under the heading *Interest Rates* for the indicative current pricing range for all debt tranches, including senior debt.

For a new issuer such as the Trust offering a unique program, a strategy of issuing a 15-year term paper may not provide an optimal initial pricing given the absence of a specific credit curve for the Trust. It is expected that at program inception, the Trust will issue debt to cover both short and long-term exposures. The terms of maturities will be staggered, up to year 30, with maturities capped at the projected Fair Allocation Amount and readjustment amount, during each six-month ~~r~~Reference ~~p~~Period. In addition, consideration for a combination of characteristics established by the Fair Allocation Amount curve and investor interest will drive the term of a funding obligation.

Indicative Debt Maturities for Post-2017 Borrowings

Using the current Fair Allocation Amount, the forecast debt maturities over the life of the FHP Program was derived in Figure 4 for illustrative purposes only and is current as of the date of this Financing Plan. Actual debt maturities may differ materially from what is illustrated in Figure 4 primarily due, but not limited to, future changes in the Fair Allocation Amount.

**Figure 4: Indicative Debt Maturities Using Current Fair Allocation Amount**




The key objective when determining the indicative debt maturities in Figure 4 is to align the annual amount of debt maturities with the principal repayment capacity under the Fair Allocation Amount curve. In years where the principal repayment capacity is less than $500 million, the debt maturities will fall in subsequent years where the cumulative maturities do not exceed the cumulative principal repayment capacity. This type of decision will be made along with other considerations such as size of each issuance to ensure liquidity (and thus, cost efficiency). As this schedule is based on the current Fair Allocation Amount curve and its underlying assumptions, a shift in the curve and/or any changes in the assumptions will result in changes to this indicative debt maturity schedule.

## 4. Refinancing

The MTI requires the Trust to establish and maintain a deposit account in the name of the Indenture Trustee for a refinancing account held for the benefit of the Indenture Trustee and specified creditors. All proceeds arising from notes and borrowings related to refinancing shall be deposited to this refinancing account.

Debt refinancing may occur under the following scenarios:

- When original financing is incurred, the short end of the yield curve is more cost efficient than the long end, on a relative basis;
- The Fair Allocation Amount or readjustment amount is updated; and
- In line with the provisions of the Act, no Clean Energy Adjustments will be collected from specified consumers between July 1, 2017 and April 30, 2021, except in limited circumstances. Accordingly, any debt maturities during this period will need to be refinanced.

Refinancing decisions will be guided by the Trust's ability to secure cost efficient long-term financing from investors and the maximum principal repayment profile dictated by the fair allocation curve.

## 5. Cash Flow Requirements

The Trust's cash flow requirements to meet its contractual obligations include, but are not limited to, the following:

- Payment of taxes, if any
- Reimbursing the FSM for costs and expenditures outlined in sections 10.2 (3) and 10.13 (3) of the General Regulation and summarized under the heading *Fair Hydro Trust Costs and Expenditures*
- Interest and fees on all outstanding borrowings
- Scheduled principal repayments
- Deposits or transfers to reserve accounts required by the MTI and summarized under the heading *Financing Reserve and Capital Accounts*
- OPG's fees as FSM as summarized under the heading *Financial Services Manager's Fees*
- Termination payments to defaulting derivative counterparties, if applicable

Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations* for the cash flow receipts' payment priority.

## 6. Current Funding Options and related Terms and Conditions

To achieve cost efficiencies, the following funding vehicles could be utilized in either the Canadian or US markets (except for the subordinated debt), from time to time, depending on the financing requirement, as well as market capacity and relative pricing at the time of issuance:

- **Short Term**: asset-backed commercial paper (ABCP) conduit and revolving bank lines of credit in the Canadian market
- **Medium to Long-Term**: term ABS and privately placed debt securities in either the Canadian or US markets
- **Subordinated Debt**: to be provided by OPG

<u>Syndicated Short-Term Warehousing Facility</u>

Short-term notes will be issued by the Trust to fund short-term borrowing requirements. The amount outstanding will be periodically refinanced and repaid by long-term funding from the capital markets once the cumulative amount of the Investment Asset available to be purchased is approximately $300 million to $500 million. This warehouse facility is expected to be utilized on a monthly basis to fund the Investment Asset purchases from the IESO.

The Trust has **[**secured a warehouse facility agreement with a bank syndicate comprising of CIBC, RBC, and Goldman Sachs for $800 million under a 2-year committed term, which would be primarily funded through their ABCP conduit**]**.

DRAFT

Revolving Bank Lines of Credit

This type of funding option provides the Trust with a warehouse facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period. This bank funding option will be utilized when it is more cost effective than short-term notes.

Term ABS

ABS are notes that will be backed by the Trust's Investment Asset and issued under the MTI. The specific terms and conditions of each series, class or tranche of notes will be set forth in a supplemental indenture and, if applicable, a terms document authorizing that series, class or tranche.

To minimize financing costs, term ABS bullet bonds will be used rather than amortizing bonds, which require an additional premium by investors. The current intent is to issue term ABS notes in the 15 to 25 year term to fill out the yield curve based on the Fair Allocation Amount and investor demand.

Subordinated Debt

Concurrent with every issuance of senior debt by the Trust, it is expected that OPG will acquire subordinated debt in an amount not to exceed 49 percent of all outstanding debt of the Trust at any time. The subordination of OPG's debt investment plays an important credit enhancement role, which is expected to minimize the cost of senior debt tranches in the external market by garnering a higher rating through some differentiation. The subordinated debt will assume substantially all of the liquidity and deferral risk for the structure. Accordingly, the cash flow payment waterfall in Figure 5 reflects this subordination structure.

The credit rating for the subordinated debt will be dependent on the rating agency assessment and evaluation of the stress credit scenarios. It is expected that there will be a minimum of one rating category differential between each debt tranche.

The interest rate applicable to subordinated debt is expected to be the aggregate of:

- The applicable base rate, which is the relevant senior debt rate, plus
- The applicable spread, which represents the additional interest, in basis points, over the base rate that will apply to the relevant subordinated debt. This rate will be established by OPG through an annual survey of market spreads from a syndicate of banks.

The subordinated debt will maintain a minimum of one rating to allow for appropriate benchmarking/pricing. A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample. The terms of the subordinated debt will be finalized prior to the initial debt issuance.

For the short-term subordinated debt lending facility, the banking syndicate will provide OPG with short-term lending spreads for comparables on committed bank credit facilities on an annual basis (i.e. ratings based on a pricing grid). A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample.

The process will be consistent with the Subordinated Debt Pricing Protocol Agreement between the Trust and the Ontario Financing Authority.

## 7. Currency and Interest Rate Hedging Programs

As the FHP Program develops over time, the Trust will consider interest rate and currency swaps and other hedging instruments, as required. Refer to the Section C, *Risk Mitigation Strategies* for further details on hedging and other instruments that could be used by the Trust.

## 8. Fair Hydro Trust Costs and Expenditures

The costs and expenditures incurred by OPG as FSM on behalf of the Trust will be in accordance with sections 10.2 (3) and 10.13 (3) of the General Regulation as amended in November 2017.

Specifically, the costs and expenditures incurred by the FSM include, but are not limited to, the following:

1. Underwriters or selling agents for funding obligations.
2. Banking fees, including but not limited to structuring fees or work fees.
3. Fees of issuing and paying agents for funding obligations.
4. Fees of trustees.
5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
6. Fees of legal counsel.
7. Rating agency fees.
8. Filing or registration fees.
9. Direct costs of OPG for employees whose work consists exclusively of the provision of services to the Trust in relation to prescribed matters.
10. Costs and expenditures incurred on behalf of any financing entity in connection with OPG's duties under the Act in relation to the financing entity.
11. Costs and expenditures incurred in relation to a management agreement between OPG as FSM and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

The costs and expenditures incurred directly by the Trust, as well as the fees of the FSM and the costs and expenditures incurred by the FSM on behalf of the Trust, are Finance Amounts that can be recovered by the Trust (as carrying costs) from the IESO until July 2021 and thereafter through Clean Energy Adjustments charged to specified consumers.

## 9. Interest Rates

As the FHP Program is expected to last until 2047, it is appropriate to assume that long-term debt rates are the primary components of the financing costs for the overall program. In estimating indicative interest rates for each tranche and debt type, the following key considerations and assumptions were utilized:

- The base case credit rating assumptions are as follows:
    - Target of "AAA" for Tranche A – Senior Debt,

  - "A" for Tranche B – Subordinated Debt which is dependent on the senior debt credit rating, and
  - "BBB" for Tranche C – Junior Subordinated Debt
- Using the projected Province of Ontario long bond rate of 4 percent plus a 25 basis points premium to reflect the securitization structure, the estimated indicative pricing over the life of Tranche A – Senior Debt is 4.25 percent
- For comparative purposes, the current pricing using the Province of Ontario long bond rate of 3.0 percent plus the same 25 basis points premium was included to reflect the current low interest rate environment
- A higher return on the subordinated debt is required to compensate for incremental risks assuming:
  - Rating agencies attribute a lower rating to the subordinated debt relative to the senior debt due to the lower priority in the cash flow waterfall (refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*)
  - Senior debt's rating needs to be credit enhanced to address collection and liquidity risks

To achieve cost efficiencies, the Trust was established with a tiered debt structure to achieve a higher credit rating for the senior debt and to maximize market capacity by accessing the AAA market to achieve cheaper financing costs overall. The following table summarizes the indicative pricing range by debt tranche:

**Table 3: Indicative Pricing by Debt Tranche**

| Tranche and Debt Type | Risk Profile | Source | % of Total Funding Requirement | Rating Category Estimate | Current Pricing | Potential Rating Range | Price Based on Rating Range |
|---|---|---|---|---|---|---|---|
| Tranche A Senior Debt | Lowest Risk | Capital Market | 51% | AAA | 3.25% | AAA – AA | 3.25% – 3.75% |
| Tranche B Subordinated Debt | Medium Risk | OPG via Province | 39% | A | 4.5% | AA – A | 4.0% – 4.5% |
| Tranche C Junior Subordinated Debt | Highest Risk | OPG via Province | 5% | BBB | 5.5% | A – BBB | 5.0% – 5.75% |
| | | OPG via Capital Markets | 5% | | | | |
| **Weighted Average** | | | | | **4.0%** | | **3.75% – 4.5%** |

The credit range for each debt tranche will be determined by the overall credit strength of the financing structure and its resilience under various credit stress scenarios. The rating agencies' assessment of the guarantee to bondholders provided by the Change of Law Protection Agreement, discussed under the heading *Indemnifications*, is one of the major factors that will influence the final ratings of each debt tranche. In addition, in assessing credit stress, the following factors, among others, will be considered: (i) declining energy usage throughout the securitization period, (ii) forecast collections in peak months not materializing, and (iii) declining consumption equal to the largest absolute annual forecast error. The market capacity for

securitization notes is predominantly available for AAA-rated notes, limited for AA-rated notes, and not tested or developed for A-rated or lower. The pricing estimates provided in Table 3 reflect these credit and liquidity factors. Debt pricing will be finalized at the time of the initial issuance.

## 10. Financing Reserve and Capital Accounts

Section 5(1) of the General Regulation stipulates that the Finance Amount shall include any amounts the Trust deposits into capital or finance reserve accounts as required under the governing documents of the funding obligations (i.e. the MTI). The accounts also act as a credit enhancement feature in support of the Trust borrowings. Any unused balance in the segregated trust accounts at the end of the term will be credited to specified consumers. Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*, for the priority order of deposits into the reserve accounts.

The MTI between the Trust and the Indenture Trustee specifies the establishment and maintenance of the following key reserve accounts:

Finance Reserve Accounts

*Program Cash Reserve Account*

The Trust shall establish and maintain a Program Cash Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the specified creditors. Available collections not required to be paid to specified creditors at such time will be credited to a capital reserve account in accordance with the terms of any applicable funding obligation agreement. The funding obligation agreement for a series, class or tranche of funding obligations will specify whether such series, class or tranche has the benefit of a capital reserve account.

*Series Finance Reserve Account*

From time to time, the Trust may establish a Series Finance Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account may be established for the purpose of allowing the Trust to reserve funds to pay finance charges (including, without limitation, interest and payments under derivative agreements) for a series of issuer funding obligations. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

Capital Reserve Account

*Series Capital Reserve Account*

From time to time, the Trust may establish a Series Capital Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This capital reserve account may be established for the sole purpose of allowing the Trust to accumulate funds to be used to make repayments in respect of funding obligations. Details of any period of accumulation and the

amounts to be accumulated shall be specified in the related funding obligation agreement. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

## 11. Indemnifications

The following forms of indemnities are expected to be issued for the FHP Program:

Change of Law Protection Agreement **[MONITOR]**

The Change of Law Protection Agreement provides bondholders a guarantee in the event of a protection event and acts as a credit enhancement for the Trust's senior debt. The guarantee will be triggered if~~when~~:

i. the Province changes the Fair Hydro legislation/regulations or passes other legislation/regulation that materially adversely affects the ability of the Trust to service interest or principal payments on its debt, or

ii. the Act is declared invalid/unconstitutional.

Upon a protection event, the Province is required to either, at its election: (i) pay the specified claims consisting of all Finance Amounts, excluding ■ **[update],** owing by the Trust as they become due and payable, or (ii) assume the Trust's obligations as primary obligor, **[**in each case**]**, without acceleration of the specified claims.

Issuer Trustee

Each of the Issuer Trustee and its related parties will be indemnified out of the trust property from and against all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, investigations, proceedings, costs, expenses or disbursements of any kind arising out of, among other things, the declaration of trust or any other program agreement, the administration of the Trust's assets or the action or inaction of the Issuer Trustee's agents, except for its own fraud, willful misconduct, bad faith or negligence.

Limited Recourse

The obligation of the Trust to pay principal and interest on the funding obligations is subject to the allocation and payment provisions in the MTI and the applicable funding obligation agreement and limited to amounts available from the collateral. Neither the Indenture Trustee, OPG nor the Issuer Trustee in its individual capacity will be personally liable for the payment of the principal or interest on the notes or any other funding obligation, or for the Trust's covenants and agreements contained in the MTI.

## 12. Financial Services Manager's Fees

All fees charged by OPG to the Trust will be in accordance with the provisions of the General Regulation.

Subject to OEB approval, OPG is entitled to the following:

- For 2017, OPG will receive $3.1 million and an amount to cover up-front costs incurred between June 1 and December 31, 2017 by OPG on behalf of the Trust (e.g. legal fees, rating agency fees, trustee fees). The $3.1 million includes a $600,000 fee and $2.5 million to cover costs incurred prior to June 1, 2017. The expenses between June 1 and December 31, 2017 will also include direct costs of OPG employees who are dedicated exclusively to Fair Hydro matters.
- For January 2018 to March 2019, OPG will receive (i) a base fee equal to 7.5 basis points, divided by 12, multiplied by ~~times~~ the average monthly outstanding debt of the Trust, (ii) a variable fee that is calculated based on how the interest rate for external funding tranches for that period compare to forecast interest rates for the period (and which fee is limited to ± 2% of 5% of the total external funding tranches issued in the period), and (iii) third-party expenses and direct employee costs of dedicated Fair Hydro employees.
- For April 2019 to March 2020, and every 12 month period thereafter, OPG will make submissions to the OEB on the base fee, variable fee and expenses. The base fee will be based on comparable fees charged by full-service managers of securitization vehicles (and other similar funds). The variable fee will be calculated in the same manner noted above, but with a refresh of forecast interest rates for the relevant period. For 2019 onward, the expenses will include direct employee costs of dedicated Fair Hydro employees only if the fees of comparable managers also include such direct costs.

A written confirmation from OPG's external auditor or another external auditor is required to accompany each submission to the OEB for the recovery of expenditures incurred by OPG on behalf of the Trust. The report shall confirm the accuracy of the costs and expenditures charged to the Trust, that such amounts were incurred by OPG, and the amounts were paid to third parties (with the exception of direct employee costs).

## C. Other Considerations

### 1. Market

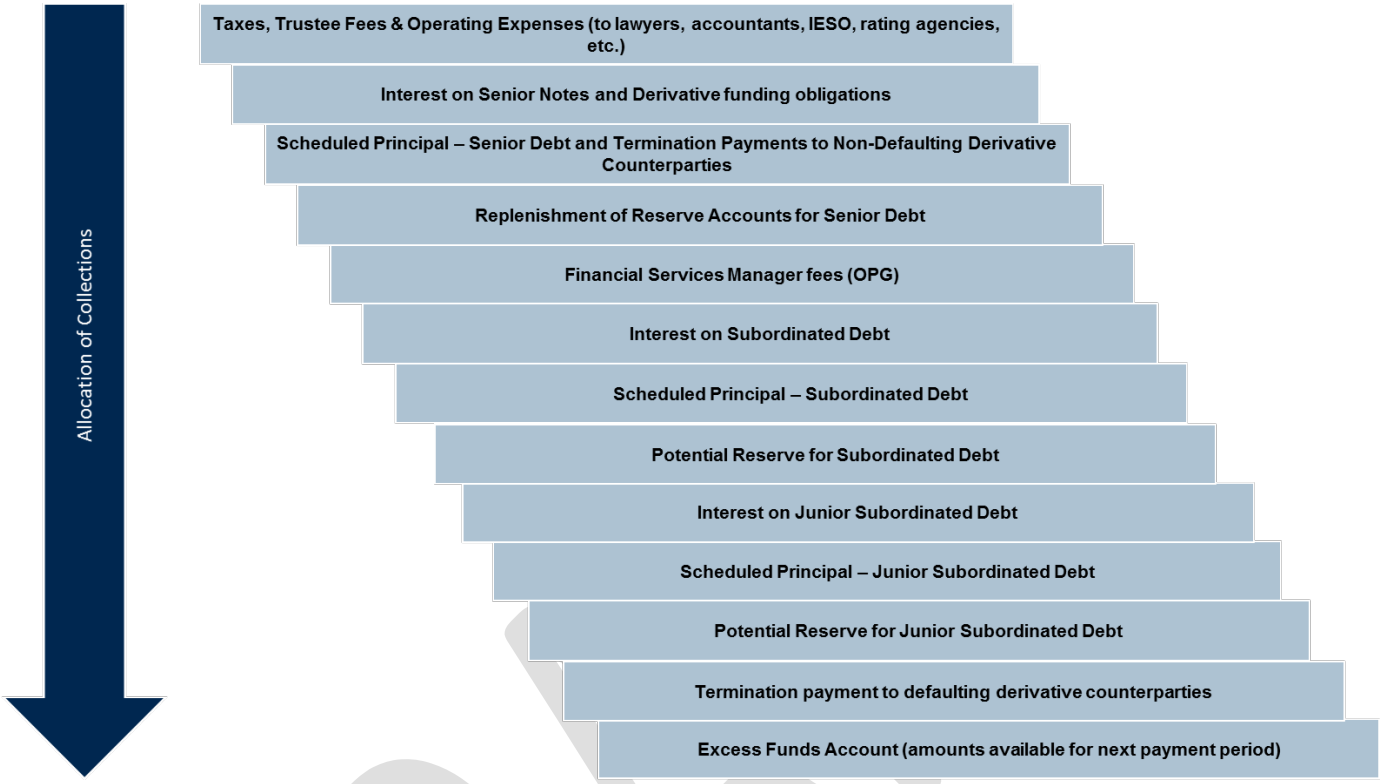
The FHP Program's financing platform was developed to allow for access to both the Canadian and US markets in order to have the best pricing and flexibility options. To the extent that the Canadian market has sufficient capacity and provides cost efficiency, priority will be given to the domestic market. However, there is no precedence in the Canadian market for term ABS notes longer than 10 years, nor the size of funding required by the FHP Program. Due to this, the ability to access the US market provides the program additional financing capacity in the event that the Canadian market cannot support the financing requirement. The FSM will make its decision on which market to access on a deal-by-deal basis.

For the initial debt issuance in 2017, it is anticipated that a term ABS funding will be sourced from the Canadian market as it is expected to be more cost efficient given current market conditions.

### 2. Application of Recovery Amounts to Funding Obligations

The MTI outlines the payment priorities for the Trust's receipt of cash flows. Figure 5 below summarizes the significant components of the waterfall.

**Figure 5: Waterfall for Fair Hydro Trust Cash Collection**




Payment Priorities

On each payment date, all amounts on deposit in the collection account will be paid out in the following order of priority:

1. to pay (A) all taxes exigible for which a governmental authority is given priority over the specified creditors under the laws of the applicable jurisdiction, and then (B) fees, expenses and reimbursements owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount of ■ percent[1] of the outstanding principal amount of all funding obligations at such time;
2. to pay (A) interest, fees and other amounts owing in respect of senior debt and (B) amounts payable to derivative counterparties other than termination payments;
3. to pay (A) principal owing in respect of senior debt to the extent required to satisfy any payment of principal; and (B) termination payments owing to derivative counterparties where the derivative counterparty is not the defaulting party or the sole affected party;
4. to deposit or transfer to any reserve account in respect of senior debt, the amount required pursuant to the applicable funding obligation agreement;
5. to pay fees, expenses, reimbursement and indemnity amounts owing to OPG;
6. to pay interest, fees and other amounts owing in respect of subordinated debt;

[1] To be confirmed.

7. to pay principal owing in respect of subordinated debt to the extent required to satisfy any payment of principal;
8. to deposit or transfer to any reserve account related solely to subordinated debt the amount required pursuant to the applicable funding obligation agreement;
9. to pay interest, fees and other amounts owing in respect of junior subordinated debt;
10. to pay principal owing in respect of junior subordinated debt to the extent required to satisfy any payment of principal;
11. to deposit or transfer to any reserve account related solely to junior subordinated debt the amount required pursuant to the applicable funding obligation agreement;
12. to pay termination payments owing to derivative counterparties where the derivative counterparty is the defaulting party or the sole affected party; and
13. to be held in the collection account for distribution in the above order of priority on the next payment date; or (ii) after all funding obligations have been paid and discharged, and all other amounts have been paid in full, to pay to the Trust.

## 3. Risk Mitigation Strategies

Currency Risk

If the Canadian market cannot support the financing capacity of the FHP Program in the future and/or it is less cost efficient than the US market at the time of each subsequent debt issuance, the Trust will access the US market for long term financing.

Under this scenario, hedges will be considered to mitigate currency exposure. For the initial debt issuance in 2017, it is anticipated that funding will be sourced from the Canadian market only as it is expected to be more cost efficient and there is sufficient market capacity.

Interest Rate and Refinancing Risk

The FHP Program is expected to span over a 30-year period until 2047 with various series of notes expected to be issued at various maturity dates. Given the long-term timeline of the program, it is subject to interest rate and refinancing risk.

Interest rate hedges, including bond forwards and/or forward start interest rate swaps, will be considered in the future to mitigate potential interest rate risk and/or refinancing risk in a cost-efficient manner.

## 4. Tax Minimization Strategies

Beneficiary – FHP2017 Inc.

The majority unitholder and beneficiary of the Trust is exempt from federal tax under section 149 of the *Income Tax Act, Canada* and from Ontario tax under section 27 of the *Ontario Taxation Act, 2007*.

The beneficiary is subject to payments in lieu of federal and provincial income taxes (PILs). In order to minimize the tax associated with the Fair Hydro Plan, an exemption from PILs payable

on income from the Trust was secured for the beneficiary **[MONITOR]**. This will result in a reduction in the income tax costs related to the Financing Plan.

Fair Hydro Trust

Trust income will be fully distributed to unitholders to ensure that there is no tax payable by the Trust.

## D. Execution Plan for the Inaugural Debt Issuance

It is anticipated that the first term ABS notes will be issued in the 1st or 2nd week of December 2017 to purchase the accumulated regulatory assets from the IESO, expected to be approximately $1 billion at that time. Accordingly, the expected size of the senior debt tranche is approximately $500 million representing the 51 percent funding structure allocation from capital markets. In the event the term markets do not have sufficient capacity for the full required funding of $500 million, the warehouse facility will be utilized. OPG will purchase subordinated and junior subordinated debt issued by the Trust for approximately $500 million representing the remaining 49 percent of the total funding requirement.

Key Activities

The following table outlines the key activities required to execute the first purchase of the Investment Asset:

| Activity | 2017 Timeline |
|---|---|
| Rating Agencies' Assessment | End of November |
| Marketing & Roadshow | Last week of November – 1st week of December |
| Term Debt Closing & Funding | 1st – 2nd week of December |
| Warehouse Facility Closing & Funding | 2nd week of December |

DRAFT

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Gadi Mayman; Anna Strathy |
| **Cc:** | Malle Hanslep (MOF) |
| **Subject:** | FHP Support Agreement OIC Draft |
| **Date:** | Thursday, September 07, 2017 5:53:34 PM |
| **Attachments:** | OIC - FHP S.5 Draft September 7.doc |

Please find attached, for your review and comment, a draft OIC authorizing the Minister of Finance and the Minister of Energy to give a guarantee/indemnity under the Fair Hydro Plan Act.

This draft gives a lot of authority to the Ministers to determine the scope and content of the guarantee. It would be helpful to consider whether additional terms and conditions (including a maximum amount or other limitations) should be included.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON
M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

WHEREAS pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "Act"), the Lieutenant Governor in Council may by order authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest as described under the Act;

AND WHEREAS pursuant to subsection 22(2) of the Act, Ontario Power Generation Inc. as financial services manager, may establish or cause to be established one or more financing entities (a "Financing Entity") that may incur funding obligations in connection with investment interests**;**

AND WHEREAS it is considered desirable to authorize the Minister of Energy and the Minister of Finance to agree to guarantee or indemnify debts, obligations, securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity;

NOW THEREFORE:

1. Pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017*, the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, are authorized to enter into one or more agreements to guarantee or indemnify the debts, obligations securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity. **[NTD: This mirrors the wording of the section so doesn't scope the guarantee in any way except by relating it to a Financing Entity.]**

**[Should the OIC narrow the scope of the guarantee? principal/interest/penalties/costs/ expenses/other obligations such as fees to service providers and payments under derivatives agreements? Some more specificity may be desirable here – usually the Province guarantees payment of principal and interest only, not penalties or other costs on debt securities and loans. We should consider whether the OIC needs to specify if guaranteeing payments on other agreements other than debt securities issued or loans taken out, understanding that a broader form of guarantee may be desired in this case. Fees payable to service providers and derivatives counterparties would generally be established under separate agreements although they are referenced in the waterfall provisions in the master trust indenture.]**

2. The Minister of Energy and the Minister of Finance, acting together on behalf of Ontario are authorized to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee and indemnity authorized under paragraph 1 of this Order, **[provided that**

**the maximum aggregate [principal amount] guaranteed/[maximum liability] shall not exceed $XX.] [NTD: Need to determine whether maximum amount will be inserted here or the two Ministers will determine maximum liability in guarantee agreement].**

3. NTD: SHOULD LGIC SPECIFY ANY OTHER TERMS AND CONDITIONS IN THE ORDER OR SHOULD ALL OTHER TERMS AND CONDITIONS BE SET BY THE TWO MINISTERS?

Recommended _____ Concurred _____
Minister of Energy/Minister of Finance Chair of Cabinet

Approved
and Ordered _____ _____
Date Lieutenant Governor

**From:** Carlos Yep
**To:** Mike Manning
**Subject:** FHP negative variable fee
**Date:** Tuesday, October 03, 2017 9:08:29 AM

---

Mike
I found this in an old document
“If the variable fee is a negative amount, such amount shall be deducted from the fixed fee payable in the following calendar year in twelve equal monthly instalments”
C

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** FHP
**Date:** Friday, October 20, 2017 12:21:54 PM

---

Hi Mike,
When you have a minute today, we would like to discuss the FHP file with you. Thanks.
I just have a meeting from 1 to 2, otherwise free.
Malle

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan; Mike Manning; Gadi Mayman; Ronald Kwan; Thouin, Alena (ENERGY); Veinot, Cindy (TBS); Mark Donaldson (MOF); Steen Hume (CAB); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); McKinlay, Tom (ENERGY) |
| **Cc:** | Tobias P. Whitfield (MOF) |
| **Subject:** | FW: 23239361-v10-CLPA - Process AgreementFIN.docx |
| **Date:** | Thursday, November 16, 2017 5:23:46 PM |
| **Attachments:** | 23239361-v10-CLPA - Process AgreementFIN.docx |

---

Hi,

Here are a few changes to the Process Agreement (marked on the clean version that Steve did a couple of days ago) to address a couple of issues.

1. S. 5.02 - Revisions to the Province's reps and warranties to focus on its obligations under the agreement as the province may have to put in place other legal authority to exercise the Province's option to assume the obligations after a protection event has occurred in the event the province determines that is appropriate. As a separate point, should we put the words "(but shall not be obligated)" into the protection agreement provision re: assumption s. 6.01. This phrase is in the process agreement right now.
2. Article VI - Revisions to this article to clarify that this is process under which the Province obtains information in order to determine whether to make an election to assume. As a result I removed the timeframe in 6.02. It is only when the Province gives the assumption notice under the protection agreement that it is triggering its option (after a protection event).

Torys is revising the process agreement draft but these are items that we would ask to include into that next wording (subject to your comments).

Thank you.

Malle

**Draft: November 14, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.10 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.11 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a

result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its

obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution~~,~~ and delivery of and performance by the Province of its obligations ~~of~~ under this Agreement ~~by the Province~~ have been authorized by all necessary action on the part of the Province;

(b) the execution and~~,~~ delivery of and performance by the Province of its obligations ~~of~~ under this Agreement ~~by the Province~~ do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## PROCESS FOR ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

**6.01 Election by the Province**

Pursuant to section 6.01 of the Protection Agreement, ~~A~~at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor by giving notice to the Indenture Trustee~~.~~ ~~To make such election, t~~ Prior to determining whether or not to exercise its election, the Province may ~~shall duly~~ complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Information Notice**"), [which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured NTD: Don't think we would send the form of agreement at this point since basic draft is attached to Protection Agreement]. The Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Information Notice to [the FSM] (the "**Proposed Assumption Date**").

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Information Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) [the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3] – this is appended to the Protection Agreement and if it has to be customized to any particular Obligations, think it would be done after Province's review of all this material.]

**6.03 Settlement of Terms**

~~Within 30 Business Days f~~Following receipt and review by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to ~~will~~ proceed with the assignment and assumption of the Obligations Secured [NTD: Do we have to confirm to OPG? This is not the legally effective notice anyway.] and, if it will be proceeding with the assignment and assumption, the date on

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

which the Province expects ~~intends~~ that assignment and assumption will be effected., [which may not be earlier than the Proposed Assumption Date.?] If the expected assignment and assumption date is later than the Proposed Assumption Date, the Pro~~i~~vince may request updated information under s. 6.02. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement., ~~which will specify such date as the "Assumption Closing Date" for the purposes thereof.~~ A decision not to proceed with an election at any time does not prevent the Province from proceeding at a later date including issuing a subsequent Election Information Notice and Article VI of this Agreement continues to apply.

**6.04 Cooperation to Implement the Assignment and Assumption**

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM] shall cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

[4]The Trust Indenture will need to permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated

below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF ELECTION NOTICE

**From:** Mike Manning
**To:** Gadi Mayman
**Subject:** FW: Bloomber Story
**Date:** Tuesday, November 14, 2017 4:04:26 PM

---

**From:** Caridia, Alex [mailto:alex.caridia@rbccm.com]
**Sent:** Tuesday, November 14, 2017 9:46 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Bloomber Story

FP Comment: Provincial finances are worse than they look as politicians hide their megaproject boondoggles
Provincial finances are worse than they look as politicians hide their megaproject boondoggles
By Special to Financial Post
Nov. 14 (National Post) -- If you're not skeptical about the true state of provincial finances, you should be.
The official balance sheets of provinces across the country mask billions of dollars in debt related to a series of megaproject follies being pursued by provincial governments and government-owned power utilities. While their debt doesn't officially appear on provincial balance sheets, taxpayers will be left footing the bill when the electricity rates needed to pay them off become so economically crippling and politically unpalatable that they will require a bailout.
A chorus of auditors general and ratings agencies have questioned this trend of masking liabilities, but have seen their warnings ignored by political leaders determined to bury the risk of pet megaprojects.
The most recent example of mixing electricity liabilities with taxpayer liabilities comes in Ontario. The province recently passed the Fair Hydro Act, which will see it issue as much as $26.2 billion in debt over the next decade to finance temporary rebates to electricity customers - all to mask the rate increases caused by a decade-long extravaganza of clean-energy spending.
The province will hide that debt from its own balance sheet through a series of accounting and regulatory maneuvers. In a recent report, Ontario's auditor general highlighted that the province's main motivation in moving debt related to the Fair Hydro Act off its balance sheet was to "avoid" any increase in its net debt that would see it post another deficit budget. The AG said the Fair Hydro Act allows the province to "make their own accounting rules" that "obfuscate the impact of their financial decisions." Ultimately, she concluded, the legislation will make Ontario's financial statements "unreliable."
At the same time, the provincially owned power utility, Ontario Power Generation (OPG), is undertaking a $12.8-billion refurbishment of the Darlington nuclear plant, a megaproject so risky that the utility couldn't do it without the backing of taxpayers. OPG's own expert admitted the company would "struggle" to issue debt to finance projects like the nuclear refurbishment if it didn't have the implicit backing of the province's taxpayers. While that debt isn't on the province's balance sheet, any bailout related to it would likely end up there.
In B.C., it's more of the same, as one ratings agency warned that deteriorating finances at the provincially owned utility, BC Hydro, could result in a taxpayer-financed bailout, which would ultimately wind up on the province's balance sheet. That risk will only increase in the coming years. The public utility's spending binge, most notably on the near $9-billion (and counting) Site C megaproject,will see its debt increase to $20 billion, up from $8 billion in

2008.
Worse still, a chunk of BC Hydro's debt has been issued solely to pay provincially mandated dividends to the tune of billions of dollars. While the province tells the public it's balancing its books, it's doing so partly by loading its utility up with debt.
BC Hydro is also hiding expenses by attributing billions of dollars to "deferral" accounts, which help juice its earnings and dividends to the province, a practice B.C.'s auditor general called "unsustainable."
In Newfoundland and Labrador, which has the lowest debt rating in Canada, the province continues to consider its "equity" in the $12.7 billion Muskrat Falls dam - up from the original estimate of $6.6 billion - as an asset. Unfortunately, that equity investment was made largely using borrowed money. Any write-down in the value of the asset will be a loss for taxpayers. Since the utility's own CEO has repeatedly called the project a boondoggle, a write-down would appear to be a near certainty.
The province's auditor general also recently warned that any "rate mitigation" enacted by the province to offset the ballooning costs of the Muskrat Falls - in effect transferring the cost from electricity customers to taxpayers - will have to "consider the impact" that such a move will have on the province's balance sheet. In short, the province's balance sheet - already in a perilous state - will be the backstop for a megaproject gone wrong, reflecting any bailout needed to mitigate its impact on electricity customers.
While the risk to electricity customers of multi-billion megaprojects has been clear for some time - a number of public utilities have been warning of double or triple-digit rate increases - the risk to provincial balance sheets is now coming into focus. Public utilities across Canada went all in on megaprojects, all the while being aided and abetted by provincial governments. Now that the risk of those projects is getting larger and larger, provincial balance sheets will take the next hit.
Brady Yauch is executive director and economist at Consumer Policy Institute.
bradyyauch@consumerpolicyinstitute.org

---

This email is intended only for the use of the individual(s) to whom it is addressed and may be privileged and confidential.
Unauthorised use or disclosure is prohibited. If you receive this e-mail in error, please advise immediately and delete the original message.
This message may have been altered without your or our knowledge and the sender does not accept any liability for any errors or omissions in the message.

Ce courriel est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent.
Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite.
Si vous recevez ce courriel par erreur, veuillez m'en aviser immédiatement, par retour de courriel ou par un autre moyen.

**From:** Hanslep, Malle (MOF)
**To:** Ken Kandeepan; Mike Manning; Anna Strathy
**Subject:** FW: Call this morning
**Date:** Friday, November 17, 2017 10:52:26 AM

---

Hi,
Steve is available at 11 if you would like to discuss this point.
Thanks
Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:50 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning
Malle, I can talk at 11 if that still works for others. Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning
Hi Steve,
We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.
Perhaps about 11 would be a good time – would that work for you?
Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.
Thanks.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Subject:** | FW: Call this morning |
| **Date:** | Friday, November 17, 2017 11:03:34 AM |
| **Attachments:** | 23239360-v14-CLPA - Protection Agreement.DOCX<br>23239360-vpdf-CLPA - Protection Agreement.PDF |

---

For 11am

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

**Sent:** Friday, November 17, 2017 10:56 AM

**To:** Malle Hanslep (MOF)

**Cc:** Thouin, Alena (ENERGY) ; McKinlay, Tom (ENERGY) ; Tobias P. Whitfield (MOF) ; Anna Strathy

**Subject:** RE: Call this morning

In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** ASHBOURNE, STEPHEN
**Sent:** Friday, November 17, 2017 10:50 AM
**To:** 'Hanslep, Malle (MOF)'
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

Malle, I can talk at 11 if that still works for others. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture

Trustee. I think it would be helpful to have a discussion to go over all of the related issues. Perhaps about 11 would be a good time – would that work for you?
Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.
Thanks.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain activities and to provide certain assurances in relation to this Agreement, on which the Province will rely.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture[3].

[3] With respect to the possibility of unsanctioned amendments, the OPG proposal would allow amendments to be made in favour of bondholders to permit individual bondholders to sue the Province under this agreement. This is

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

---

one circumstances that demonstrates why the Province needs the right to approve all underlying amendments before they can operate and be recognized in the context of this agreement.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

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

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the

Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall make, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. Not less than 3 Business Days prior to each Payment Date occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, the Manager shall deliver a written statement, substantially in the form attached as Exhibit B (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Payment Date, together with a detailed description identifying such Approved Obligations, the nature and amount of payments due and payable thereunder on the Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Payment Date, the Province shall pay the Aggregate Approved Obligations Amount [to the Indenture Trustee and the Indenture Trustee][4] shall deposit such amount to the Protection Account.

iii. On each such Payment Date, [the Financing Entity shall cause] the Paying Agent[5] shall apply all amounts on deposit in the Protection Account to pay

[4] Confirm payment mechanics. Consider direct deposit. Confirm that no set-off if pay through indenture trustee.

[5] To be effective, will need to add the Paying Agent as a party to this agreement.

each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the applicable payment provisions of the Trust Indenture applicable to the making of such payments on the Payment Date (each, a "**Beneficiary Payee**")[6].

iv. On any Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Payment Date;

(ii) the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount on remaining deposit in

[6] For example, the effect of this is that senior notes will receive cash earmarked for sub notes based on the scheduled amounts payable for sub notes. Confirm that is the intention.

the Protection Account that has not been applied to pay Beneficiary Payees on the Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the payment amounts, if any, and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(d) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(e) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include a loss resulting directly from a failure by the Province to pay a specified amount due and payable to a Beneficiary Payee under the Limited Guarantee.

**2.02 Intentionally Deleted.**

**2.03 <u>Absence of Set-off</u>**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[7] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the [Indenture Trustee][8] shall apply all amounts paid by the Province into the Protection Account on a Payment Date in respect of an Approved Obligation to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a)[9]. Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[10]. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated Section 5.01 in relation to such continuing obligations.

---

[7] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[8] Conform.

[9] For example, amounts payable in respect of subnotes will not get the amounts payable to them based on scheduled payments since senior notes will preempt them under the acceleration waterfall.

[10] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or

until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section 8.02.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements[11] and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

[11] The deletion of the earlier proviso in this draft is based on the understanding that the Province will receive adequate notices of these event as a Specified Creditor under the Trust Indenture. OPG will agree not to allow any of these events without confirming to the Province under the Process Certificate that the changes are within the agreed scope of the Reviewed Documents, etc.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied [at the time the Primary Obligation was incurred][12].

### 4.02 Adherence Conditions

[There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation.][13] The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence [or any amendment][14] of the Primary Obligation, and (ii) [one Business Day after] [on] the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that OPG has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

---

[12] Still under consideration. Tied to the discussion around authorized "amendments".

[13] Under consideration by the Province. Province is comfortable that immaterial (<1M) obligations need not be subject to these adherence provisions.

[14] Still under consideration. Tied to the discussion around authorized "amendments".

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights,

interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

### 5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[15]

### 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

[15] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

**6.02 Cooperation to Implement the Assignment and Assumption**

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[16]

**6.03 Effect of Assumption**

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

**6.04 Interim Period**

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

**6.05 Rights in respect of the Assets Comprising the Collateral**

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

[16] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity in any of the following circumstances:

(a) following the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered[17].

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[18]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

---

[17] This will be affected by the resolution of the "amendments" point.

[18] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

## SCHEDULE A
## DEFINED TERMS[19]

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of a Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Payment Date, the amount due and payable to the Beneficiary on such Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Payment Date, the amount that would be available to be paid to the Beneficiary on such Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amounts available under such applicable payment provisions of the Trust Indenture would be limited to the Clean Energy Adjustment payable in respect of such month.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

[19] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][20]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act as of the date of this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

---

[20] Process Agreement references define Suspension Rights. If dealers and OPG are comfortable with broad suspension rights (subject to the agreement of the Province with OPG under Process Agreement, not to implement suspension rights other than for Program Breach or Breach Event), then may be able to better cleanse this Agreement of operative references to the Process Agreement.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, [as amended, supplemented, restated or otherwise modified from time to time].[21]

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, [as amended, supplemented, restated or otherwise modified from time to time].

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Date**" means the 15th day of each month.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] [as amended, supplemented, restated or otherwise modified from time to time].

["**Process Certificate**" has the meaning ascribed thereto in the Process Agreement.]

[21] Still under consideration. Tied to the discussion around authorized "amendments".

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement, or (b) this Agreement or any of the agreements under which Approved Obligations arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligation Amounts to persons

who would be Beneficiary Payees under this Agreement in respect of Approved Obligations that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain activities and to provide certain assurances in relation to this Agreement, on which the Province will rely.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture[3].

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

[3] With respect to the possibility of unsanctioned amendments, the OPG proposal would allow amendments to be made in favour of bondholders to permit individual bondholders to sue the Province under this agreement. This is one circumstances that demonstrates why the Province needs the right to approve all underlying amendments before they can operate and be recognized in the context of this agreement.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may ~~provide~~deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to ~~pay~~make payments in respect of the Approved Obligations ~~as provided~~at the times, in the amounts and subject to the requirements specified in this Agreement. From and after ~~the~~such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations ~~and receive Subrogation Amounts in accordance with the following procedures~~ (the "**Limited Guarantee**"), and the Financing Entity shall make, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. ~~One~~Not less than 3 Business ~~Day~~Days prior to each Payment Date ~~when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of~~occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, the Manager shall deliver a written statement, substantially in the form attached as Exhibit B (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of ~~such Approved Obligations on such Payment Date~~the Approved Obligations that are due and payable on such Payment Date, together with a detailed description identifying such Approved Obligations, the nature and amount of payments due and payable thereunder on the Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement,

and details regarding any default in performance by any party obligated thereunder.

ii. On each such Payment Date, the Province shall pay the Aggregate Approved Obligations Amount [to the Indenture Trustee and the Indenture Trustee][4] shall deposit such amount to the Protection Account.

iii. On each such Payment Date, [the Financing Entity shall cause] the Paying Agent[5] shall apply ~~the Aggregate Approved Obligations Amount deposited to~~all amounts on deposit in the Protection Account to pay ~~in full to the applicable Beneficiaries~~each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Payment Date the Approved Obligation Amount ~~of each Beneficiary payable~~for such Beneficiary in respect of such Approved Obligation on such Payment Date; provided that if ~~for any reason~~ the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount ~~available~~on deposit in the Protection Account on the Payment Date shall be applied to pay Beneficiaries in the order of priority in which ~~the applicable~~such Approved Obligations are payable ~~in~~under the ~~section~~applicable payment provisions of the Trust Indenture ~~which would otherwise be~~ applicable to the making of such payments on the Payment Date (each, a "**Beneficiary Payee**")[6].

iv. On any Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Payment Date;

(ii) ~~iv. The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which~~

[4] Confirm payment mechanics. Consider direct deposit. Confirm that no set-off if pay through indenture trustee.
[5] To be effective, will need to add the Paying Agent as a party to this agreement.
[6] For example, the effect of this is that senior notes will receive cash earmarked for sub notes based on the scheduled amounts payable for sub notes. Confirm that is the intention.

~~for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "**Subrogation Amounts**").~~ the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount on remaining deposit in the Protection Account that has not been applied to pay Beneficiary Payees on the Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) ~~(b)~~ For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the payment amounts, if any, and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(d) ~~(c)~~ Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(e) ~~(d)~~ Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(f) ~~(e)~~ The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include ~~the loss represented by the failure to receive the principal and interest itself~~a loss resulting directly from a failure by the Province to pay a specified amount due and payable to a Beneficiary Payee under the Limited Guarantee.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[37] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period,

[37] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the [Indenture Trustee][8] shall apply ~~the full amount~~all amounts paid by the Province into the Protection Account on a Payment Date in respect of an Approved Obligation to pay the ~~corresponding amount~~amounts due and payable to the ~~applicable~~ Beneficiaries ~~under the Approved Obligation~~ as and to the extent provided for in Section 2.01(a)[9]. Upon a payment having been made by or on behalf of the Province into the Protection Account ~~in respect of an Approved Obligation~~, the ~~amount~~amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved ~~Obligation~~Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[4][10]. For greater certainty, the obligations arising in respect of ~~the~~an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

[8] Conform.

[9] For example, amounts payable in respect of subnotes will not get the amounts payable to them based on scheduled payments since senior notes will preempt them under the acceleration waterfall.

[4][10] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section ~~6.03~~ 8.02.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements[11] and this Agreement, to:

[11] The deletion of the earlier proviso in this draft is based on the understanding that the Province will receive adequate notices of these event as a Specified Creditor under the Trust Indenture. OPG will agree not to allow any of these events without confirming to the Province under the Process Certificate that the changes are within the agreed scope of the Reviewed Documents, etc.

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied [at the time the Primary Obligation was incurred][12].

[12] Still under consideration. Tied to the discussion around authorized "amendments".

### 4.02 Adherence Conditions

[There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation.][13] The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) ~~OPG (~~the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) ~~delivers an officer's certificate~~and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence [or any amendment][14] of the Primary Obligation, and (ii) [one Business Day after] [on] the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that OPG has delivered to the Province ~~all certifications required by the Province in connection with the incurrence~~a Process Certificate in accordance with Section **[3.01]** of the ~~Primary Obligations; and [**NTD: does this work for derivatives? They are often priced at the same time they are entered into.**]~~Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

[13] Under consideration by the Province. Province is comfortable that immaterial (<1M) obligations need not be subject to these adherence provisions.

[14] Still under consideration. Tied to the discussion around authorized "amendments".

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary ~~for~~to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture~~.~~ in the manner and to the extent contemplated in Section 2.01.

### 5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[~~5~~15]

### 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

[~~5~~15] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[616]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

[616] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity in any of the following circumstances:

(a) ~~upon~~following the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered[17].

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").~~7~~[18]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

[17] This will be affected by the resolution of the "amendments" point.

~~7~~[18] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their ~~rights~~benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS[8][19]**

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of ~~any~~a Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of ~~any Payment Date and~~ an Approved Obligation~~, either~~ under which an amount is due and payable on a Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Payment Date, the amount due and payable to the Beneficiary on such Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in ~~the applicable section in full~~such payment provisions that are due and payable on the Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Payment Date, the~~ aggregate~~ amount that would be ~~payable~~available to be paid to the Beneficiary on such Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that ~~Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period~~the amounts available under such applicable payment provisions of the Trust Indenture would be limited to the Clean Energy Adjustment payable in respect of such month.

[8] ~~Province should not have~~[19] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. ~~Province is given sufficient notice of all amendments by the terms of the various agreements~~All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][9][20]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act as of the date of this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[9] ~~Lawyers to discuss how to~~[20] Process Agreement references define Suspension Rights. If dealers and OPG are comfortable with broad suspension rights (subject to the agreement of the Province with OPG under Process Agreement, not to implement suspension rights other than for Program Breach or Breach Event), then may be able to better cleanse this Agreement of ~~all~~operative references to the Process Agreement ~~so that a copy of such agreement need not be provided to the rating agencies~~.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" ~~means the~~ has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity , [as amended, supplemented, restated or otherwise modified from time to time].[21]

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, [as amended, supplemented, restated or otherwise modified from time to time].

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Date**" ~~has the meaning ascribed thereto in the Trust Indenture~~means the 15th day of each month.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] [as amended, supplemented, restated or otherwise modified from time to time].

[21] Still under consideration. Tied to the discussion around authorized "amendments".

["**Process Certificate**" has the meaning ascribed thereto in ~~Section 3.01 of~~ the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay ~~Obligations Secured~~Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement, or (b) this Agreement or any of the agreements under which Approved Obligations ~~Secured~~ arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the

ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay ~~Obligations Secured~~Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement in respect of Approved Obligations ~~Secured~~ that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in ~~Section~~ subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

Document comparison by Workshare Compare on Friday, November 17, 2017 10:53:04 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/13 |
| Description | TOR_2528-#23239360-v13-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/14 |
| Description | TOR_2528-#23239360-v14-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 165 |
| Deletions | 93 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 260 |

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan; Mike Manning; Gadi Mayman; Ronald Kwan |
| **Cc:** | Tobias P. Whitfield (MOF) |
| **Subject:** | FW: Change of Law Protection Agreement |
| **Date:** | Thursday, November 16, 2017 8:26:55 PM |
| **Attachments:** | Change of Law Protection Agreement - Nov 16 (Osler)#2.DOCX<br>Compare Protection Agreement (Nov 14 v Nov 16#2).PDF |

These are very preliminary comments only which I sent to the other legal. Torys has advised that they are sending a further "conformed" version but we haven't received it yet so I'm sending this to you.

**From:** Hanslep, Malle (MOF)
**Sent:** November-16-17 8:25 PM
**To:** ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY)
**Subject:** FW: Change of Law Protection Agreement

I reviewed this and I think that in particular we will need to go over the changes to s. 2.01 where the Manager calculates the Aggregate Approved Obligation Amounts as well as those definitions and the difference between the acceleration and no acceleration descriptions. In drafting the wording of the limited guarantee appropriately, an understanding of the proposed amendments to the regulation of the Fair Hydro Plan Act are important as I understand that those cap the potential for balloon payments although they permit some additional payments depending on a number of factors.

We would appreciate if Energy Legal could review this wording in particular to see if it is consistent with the concepts in the proposed regulation as we don't have sufficient familiarity with the regulation and how this would work.. Thank you.

Also the changes seem to set up reliance on the Manager to calculate how much is owing and so this approach should be considered.

Also, changes to 4.02 to focus on Funding Obligations will need to be reviewed and the proposed optional approach to a certificate for amendments, has not been resolved. Hopefully we will receive a further proposal or follow up on that.

I know that we are awaiting a further conformed version of both of the agreements from Torys so not sure what changes they will make.

Malle

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** November-16-17 6:34 PM
**To:** ASHBOURNE, STEPHEN; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** Change of Law Protection Agreement

Attached is a comment draft of the Change of Law Protection Agreement prepared by Osler. This comment draft has not been reviewed by the dealers and is subject to any comments the dealers may have.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Tuesday, November 14, 2017 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on

November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

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

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

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may

from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

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

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

**1.17 Currency**

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

**1.18 References to Acts of the Financing Entity**

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

**1.19 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations as provided in this Agreement. From and after the delivery of a Payment Demand, the Province shall make payments in respect of Approved Obligations and receive Subrogation Amounts in accordance with the following procedures (the "**Limited Guarantee**"):

i. One Business Day prior to each Payment Date when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of the Aggregate Approved Obligations Amount in respect of such Approved Obligations on such Payment Date.

ii. On each Payment Date the Province shall pay the Aggregate Approved Obligations Amount to the Indenture Trustee and the Indenture Trustee shall deposit such amount to the Protection Account.

iii. On each Payment Date, the Paying Agent shall apply the Aggregate Approved Obligations Amount deposited to the Protection Account to pay in full to the applicable Beneficiaries the Approved Obligation Amount of each Beneficiary payable on such Payment Date; provided that if for any reason the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount available shall be applied in the order of priority in which the applicable Approved Obligations are payable in the section of the Trust Indenture which would otherwise be applicable to the making of such payments.

iv. The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have

been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "**Subrogation Amounts**").

(b) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include the loss represented by the failure to receive the principal and interest itself.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[3] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period,

[3] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation as provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[4]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to related Subrogation Amounts and the rights contemplated Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

[4] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred.

### 4.02 Adherence Conditions

There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation. The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) OPG (acting in its capacity as FSM) delivers an officers certificate addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence of the Primary Obligation, and (ii) one Business Day after the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and [**NTD: does this work for derivatives? They are often priced at the same time they are entered into.**]

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

**4.03 Evidence of Satisfaction**

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust

Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[5]

**5.04 Representations and Warranties**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[5] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[6]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by

[6] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[7]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

[7] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their rights hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of any Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, in respect of any Payment Date and an Approved Obligation, either:

(a) if no Acceleration has occurred in respect of any Obligation Secured, the amount payable on such Payment Date in respect of the Approved Obligation determined on the assumption that there are adequate amounts available under the applicable provisions of the Trust Indenture to pay all amounts referred to in the applicable section in full; and

(b) if an Acceleration has occurred in respect of any Obligations Secured, the aggregate amount that would be payable on such Payment Date in respect of the Approved Obligation under the applicable provisions of the Trust Indenture determined on the assumption that Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][8]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

[8] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" means the has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] as amended, supplemented, restated or otherwise modified from time to time.

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured that has the effect of the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Subrogation Amounts**" has the meaning ascribed thereto in Section 2.01(a)iv.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same

may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised ~~through the Indenture Trustee~~ under, in accordance with and subject to the limitations set forth in the Trust Indenture. ~~No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.~~

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days

comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay ~~the amount of~~ the Approved Obligations ~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity~~* ~~to the Indenture Trustee~~ *~~as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.~~as provided in this Agreement. From and after the delivery of a Payment Demand, the Province shall make payments in respect of Approved Obligations and receive Subrogation Amounts in accordance with the following procedures (the "**Limited Guarantee**"):

i. One Business Day prior to each Payment Date when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of the Aggregate Approved Obligations Amount in respect of such Approved Obligations on such Payment Date.

ii. On each Payment Date the Province shall pay the Aggregate Approved Obligations Amount* to the Indenture Trustee *and the Indenture Trustee shall deposit such amount to the Protection Account.

iii. On each Payment Date, the Paying Agent shall apply the Aggregate Approved Obligations Amount deposited to the Protection Account to pay in full to the applicable Beneficiaries the Approved Obligation Amount of each Beneficiary payable on such Payment Date; provided that if for any reason the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such

[3] ~~The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.~~

Approved Obligation Amounts in full, the amount available shall be applied in the order of priority in which the applicable Approved Obligations are payable in the section of the Trust Indenture which would otherwise be applicable to the making of such payments.

iv. The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "**Subrogation Amounts**").

(b) ~~Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation, in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**").~~ For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

[4] ~~Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.~~

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include the loss represented by the failure to receive the principal and interest itself.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[53] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation as provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved

[53] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[64]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to related Subrogation Amounts and the rights contemplated ~~under~~ Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

## 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

## 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing

[64] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~,provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained~~.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the

Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred.

### 4.02 Adherence Conditions

~~The following~~There shall be ~~the~~no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation. The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) ~~the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG~~ OPG (acting in its capacity as FSM) ~~and~~delivers an officers certificate addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence ~~or any amendment~~ of the Primary Obligation, and (ii) ~~on~~one Business Day after the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and **[NTD: does this work for derivatives? They are often priced at the same time they are entered into.]**

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement. [7]

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive ~~distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture~~the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the

[7] ~~Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut off opposite the indenture trustee.~~

Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) ~~(a)~~ The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[85]

## 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

[85] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[96]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: ~~Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.~~[10] ~~Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.~~[11] the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

[96] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

[10] ~~The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.~~

[11] ~~It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.~~

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[~~12~~7]

[~~12~~7] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]

Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries ~~are not parties to this Agreement and accordingly any benefits derived~~derive their rights hereunder ~~shall arise exclusively~~ through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of any Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, in respect of any Payment Date and an Approved Obligation, either:

(a) if no Acceleration has occurred in respect of any Obligation Secured, the amount payable on such Payment Date in respect of the Approved Obligation determined on the assumption that there are adequate amounts available under the applicable provisions of the Trust Indenture to pay all amounts referred to in the applicable section in full; and

(b) if an Acceleration has occurred in respect of any Obligations Secured, the aggregate amount that would be payable on such Payment Date in respect of the Approved Obligation under the applicable provisions of the Trust Indenture determined on the assumption that Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][~~13~~8]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

[~~13~~8] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" means the has the meaning ascribed thereto in Section 2.01(~~b~~a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as ~~may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

~~"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) ~~any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii)~~ any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (~~iii~~ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; ~~(iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and~~ (~~v~~and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] as amended, supplemented, restated or otherwise modified from time to time.

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction ~~(i)~~ determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured~~, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in~~ that has the effect of the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Subrogation Amounts**" has the meaning ascribed thereto in Section 2.01(a)iv.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ken Kandeepan; Anna Strathy; Veinot, Cindy (TBS); Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Cc:** | ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) |
| **Subject:** | FW: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Wednesday, November 15, 2017 9:27:00 AM |
| **Attachments:** | 23239360-vpdf-CLPA - Protection Agreement.pdf<br>23239360-vpdf-CLPA - Protection Agreement.pdf<br>23239361-vpdf-CLPA - Process Agreement.PDF<br>23239361-v10-CLPA - Process Agreement.DOCX<br>23239361-vpdf-CLPA - Process Agreement.PDF<br>23239360-v12-CLPA - Protection Agreement.DOCX |

Hi all,

These revisions were sent out by Steve last evening. Please review to ensure all the comments at the meeting yesterday were captured. Also, please review s. 4.01 in particular as based on discussions with Steve last evening the language was modified a bit to change it so the Province may disagree with the amount for the protection agreement maximum proposed by OPG on reasons related to the inconsistencies or inaccuracies as opposed to agreeing as opposed to confirming agreement. Please let us know if you have comments on this. Thanks.

Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

**Sent:** November 14, 2017 8:30 PM

**To:** Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)

**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]

**Sent:** Thursday, November 09, 2017 2:11 AM

**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca

**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on

nd

November 2 . The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com [osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

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

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

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**~~[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**~~[NAME OF INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and~~Computershare Trust Company of Canada, in its capacity as trustee ~~of the **[FINANCING ENTITY]**, a trust settled by the FSM~~(the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as ~~Indenture Trustee and in its capacity as trustee for the in accordance with the Trust~~ Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity ~~in its capacity as Financing Entity Trustee~~, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

~~OPG~~The FSM and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity ~~Trustee~~, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other ~~agreement~~Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity ~~Trustee~~

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, ~~(~~without Acceleration~~)~~, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

~~[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

~~[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection Account~~ Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account~~.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.]~~[3]

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

[3] ~~Under consideration.~~

### 2.03 Absence of Set-off

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

### 2.04 Payment into ~~Collection~~Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[4] ~~This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.~~

Obligation to the extent so paid[5]6. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment,

[5] ~~Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03~~]~~.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if ~~(a)~~ the Adherence Conditions applicable thereto have been satisfied~~; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation~~.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;~~

~~(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;~~

(b) ~~(d)~~ the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the ~~Province and the~~ Indenture Trustee, ~~one Business Day~~ prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), ~~setting out the following with respect to the Primary Obligation:~~confirming that the FSM

[6] ~~Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.~~

has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

~~i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and~~

~~ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and~~

(c) ~~(c)~~ the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.[7]

### 4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be ~~defect~~defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## ~~RIGHTS OF THE~~ PROVINCE MATTERS

### 5.01 Assignment and Subrogation

~~Upon paying an amount in respect of an Approved Obligation:~~

~~(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or~~

~~(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,~~

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

~~5.03 Voting Rights under "Outstanding Notes"~~

~~Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7]:~~

~~(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and~~

~~(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.~~

## 5.03 ~~5.04~~ Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

## 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[7] ~~This concept needs to be reflected in the Trust Indenture.~~

[8] ~~General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE~~ Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee~~.~~ but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

---

[9] Further details regarding obtaining of third party consents and rating agency approvals to be ~~considered~~provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize

the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

~~7.04~~ ~~**Release of all Collateral**~~

~~(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.~~

~~(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.~~

~~7.05~~ ~~**Right to Notice and Attend Meetings**~~

~~The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.~~

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

**8.01** ~~**Suspension Notice**~~**Suspension Notice**

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) ~~shall be provided by the FSM or the Province to the Indenture Trustee promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(b) ~~may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the ~~Financing Entity~~Limited Guarantee shall not ~~incur~~apply in respect of any ~~new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province~~Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o Ontario Power Generation Inc.~~

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 ~~Force Majeure~~Intentionally Deleted**

~~In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.~~

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 ~~9.08~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY**~~**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE** ~~**FOR [FINANCING ENTITY]**~~**OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

**CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

~~["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]~~

~~["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]~~[11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of ~~OPG~~the FSM under the Process Agreement; or (b) any representation or warranty made by ~~OPG~~the FSM, any certification made by ~~OPG~~the FSM under the Process Agreement, or any certification made by ~~OPG~~the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM~~, the Administrative Agent~~ or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as

~~[10] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.~~
~~[11] Note: To be confirmed if required.~~

the FSM~~, the Administrative Agent~~ or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

~~"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "~~Investment Interest~~investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

~~[~~"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.~~]~~

~~[~~"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.~~]~~[12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, ~~and acknowledged and~~

[12] ~~Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

~~accepted by~~as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation~~,~~ or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (~~a~~i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; ~~and~~ (~~b~~ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and ~~OPG~~[the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection ~~Agreement Maximum"~~** ~~means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~**Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts ~~on~~in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii)

issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

Document comparison by Workshare Compare on Tuesday, November 14, 2017 7:59:23 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/9 |
| Description | TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/12 |
| Description | TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 164 |
| Deletions | 150 |
| Moved from | 6 |
| Moved to | 6 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 326 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~Ontario Power Generation Inc., as the Manager and~~Computershare Trust Company of Canada, in its capacity as ~~Manager~~trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust ~~settled by the FSM~~ under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity~~"), Ontario Power Generation Inc.~~ and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee ~~and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture~~, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The ~~FSM, as agent of the~~ Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

## 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

## 1.03 ~~1.02~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

## 1.04 ~~1.03~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

## 1.05 ~~1.04~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation. ~~To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.~~

## 1.06 ~~1.05~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

## 1.07 ~~1.06~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

## 1.08 ~~1.07~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

## 1.09 ~~1.08~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

## 1.10 ~~1.09~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

## 1.11 ~~1.10~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

## 1.12 ~~1.11~~ Counterparts; Electronic Delivery

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

## 1.13 ~~1.12~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

## 1.14 ~~1.13~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

## 1.15 ~~1.14~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## 1.16 ~~1.15~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

## 1.17 ~~1.16~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

## 1.18 ~~1.17~~ References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, ~~the FSM as agent for~~ the Financing Entity Trustee ~~(in its capacity~~ as trustee of the Financing Entity~~). [NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]~~.

## 1.19 ~~1.18~~ Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall,

notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable[1], without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[1] ~~Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

[2] ~~Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account ~~5 Business Days prior to the fifteen day of each calendar month~~[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.~~

**2.03 Absence of Set-off**

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

## 2.04 Payment into Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture ~~as if~~on the basis that it ~~were~~is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[3~~6~~]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[3] ~~Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement. ~~Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?~~

entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. ~~**[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**~~

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

## 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations ~~and termination of the Trust Indenture~~, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

## 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~.~~,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

# ARTICLE III
# THE INDENTURE TRUSTEE

## 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) [NTD: already covered in process certificate in section 3.01 of the Process Agreement]~~

~~(c) [NTD: already covered under Process Agreement.]~~

(b) ~~(d)~~ the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided ~~in OPG's~~by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, ~~one Business Day~~ prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) ~~(e) [NTD: This is more properly dealt with in Section 8.02~~the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.~~]~~ [7]

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

~~(a) Upon paying an amount in respect of an Approved Obligation:~~

~~i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or~~

~~ii. [as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]~~

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~Subject to Section 5.01(b), the~~The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the

Financing Entity. ~~Subject to Section 5.01(b), the~~The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) ~~(b) the~~The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province~~ will be a Specified Creditor hereunder and its entitlements~~, in its capacity as a Specified Creditor~~ are~~, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including~~, without limitation,~~ **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**~~, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv~~ and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## ~~5.03 Voting Rights under "Outstanding Notes"~~

~~**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[4]:**~~

~~[4] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).~~

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

## 5.03 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[5][8] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

## 5.04 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(a) (b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) (c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the

[5] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

~~execution and~~the execution, delivery and performance of this Agreement by the Province ~~and the performance by the Province of its obligations hereunder~~do not result in the violation of any applicable law; and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[~~6~~9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead ~~be~~become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in**

[~~6~~9] Further details regarding obtaining of third party consents and rating agency approvals to be ~~considered~~provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

**Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

~~**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**~~

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 ~~Suspension Notice~~Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) ~~shall be provided by the Province to the Indenture Trustee promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(b) ~~may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), this Change of Law Protection Agreementthe Limited Guarantee shall not apply in respect of any new Primary Obligation followingSecured incurred on or after the date oftime such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]** is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this AgreementArticle VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the [later] of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt ofthe date that a Termination Notice from the

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

~~Province~~delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity~~, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and~~.

~~(c) [subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?] following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.~~

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

### 9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

### 9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 Intentionally Deleted

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement~~ and all such Persons who are Beneficiaries derive their rights~~. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and ~~such rights are~~shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. ~~**[NTD: Consider merging this section 9.08 with section 1.03.]**~~

### 9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[7] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

[7] ~~Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.~~

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured ~~that is a Funding Obligation or otherwise constitutes a Finance Amount.~~(a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

[**"Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means ~~[~~an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture~~]~~ or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.~~] [NTD: To be discussed.]~~

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, ~~**[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**~~

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, ~~or~~and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:00:39 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/10 |
| Description | TOR_2528-#23239360-v10-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/12 |
| Description | TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 155 |
| Deletions | 161 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 332 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to ~~the FSM, as agent of~~ the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.11 ~~1.10~~ Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.12 ~~1.11~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM ~~shall use commercially reasonable efforts~~] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; ~~and~~

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) ~~(ii) to,~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM ~~or the Financing Entity~~, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~the FSM~~OPG (or their respective designees, provided that such designees are also executive officers of ~~the FSM~~OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments ~~shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement~~under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d~~b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation ~~that would be adverse to the Issuer~~, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up,

liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) [Not less than [■]15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which shall be based onmay not exceed the Initial Forecast.

(b) Not more than [■]10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province andmay disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG willshall discuss andany discrepancies with the

Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.~~]~~

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum ~~based on~~, which may not exceed such Forecast.

(d) Not more than ~~[■]~~10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province ~~shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will~~may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss ~~and~~any discrepancies with the Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall use commercially reasonable efforts to~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) ~~(c)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of the Financing Entity enforceable against the Financing Entity~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) ~~(d)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) ~~(e)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

~~(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;~~

(a) ~~(b)~~ the execution, delivery and performance ~~by the Province~~ of this Agreement ~~does not and will not result in a violation of any applicable law;~~by the Province have been authorized by all necessary action on the part of the Province;

(b) ~~(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and~~the execution, delivery and performance of this Agreement by the Province ~~and the performance by the Province of its obligations hereunder~~do not result in the violation of any applicable law; and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS~~[2]~~

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

~~[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.~~

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured ~~is~~ attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM ~~will use commercially reasonable efforts to~~] shall cause the Financing Entity ~~to, use commercially reasonably efforts~~ to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~; provided that, this Section 6.05 shall not apply to any Obligations Secured~~, other than to the extent of payment obligations

[3] ~~Note to Province: A~~Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured ~~is required. It is impractical to have an~~. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement ~~for each type of Obligation Secured~~will work for swaps, debt and service obligations.

[4] ~~Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[~~5~~4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. ~~**[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**~~

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[~~5~~] ~~Note:~~ [4]The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. ~~**[NTD: The form of Assumption Agreement shall**~~The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement ~~**(consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We**~~, The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to ~~**otherwise**~~ address ~~**your comment**~~this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured ~~**pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows**~~on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.~~**]**

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**~~8.06 Intentionally Deleted~~[6]**

**8.06 ~~8.07~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[6] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.~~ **~~[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]~~**

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., ~~SOLELY~~ [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:22:37 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/8 |
| Description | TOR_2528-#23239361-v8-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/10 |
| Description | TOR_2528-#23239361-v10-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 173 |
| Deletions | 108 |
| Moved from | 5 |
| Moved to | 5 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 291 |

**Draft: November 14, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

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

**1.10 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.11 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.12 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a

result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its

obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

**6.01 Election by the Province**

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

### 6.04 Cooperation to Implement the Assignment and Assumption

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM] shall cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured

[4]The Trust Indenture will need to permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF ELECTION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")~~,~~[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~[the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~[the FSM] has agreed to perform and assurances ~~OPG~~[the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~[the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the ~~Financing Entity or the~~ Financing Entity ~~Trustee~~**

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

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

**1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.11 ~~1.10~~ Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.12 ~~1.11~~ Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~OPG~~[THE FSM]

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~[the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~[the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~[the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~for replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~[the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~[the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]~~

~~[2] Note: The tax documents to be provided to the Province are under consideration.~~

**2.02 Covenants**

(a) ~~OPG shall, as the FSM,~~[The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of ~~(1) the Administrative Agent under the Administrative Services Agreement; or (2)~~ the Manager under the Management Agreement; or

~~(C) consolidate or merge with or into any other Person;~~

(C) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~.

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or~~

~~(H) voluntarily dissolve or liquidate.~~

(b) ~~OPG~~[The FSM] shall:

(i) comply, and ~~as the FSM~~shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected~~; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~OPG~~[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and

(ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments

under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d)(ii~~b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~[the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~e~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~[the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation~~;~~ or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation

themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

~~(b)~~ ~~with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and~~

(b) ~~(c)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

~~(a)~~ ~~The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ Not less than ■15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"). ~~In determining~~; and (ii) notice of the initial Protection Agreement Maximum, ~~the Province~~which may ~~have regard to (but not be bound by)~~not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is

inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) ~~Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.~~ Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~OPG~~[the FSM]

~~OPG~~[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario~~, is duly qualified to carry on its business in each jurisdiction in which it carries on business,~~ and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto~~ and to own its property and carry on its business as currently conducted~~.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of OPG enforceable against OPG~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of ~~OPG or~~ the Financing Entity or in the ability of ~~OPG or~~ the Financing Entity to perform ~~their respective~~its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result

in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) ~~to~~ elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to ~~OPG~~[the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to ~~OPG~~[the FSM] (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to ~~OPG, OPG~~[the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~ in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

~~OPG~~[The FSM] shall cooperate with the Province and~~, as FSM,~~ will use commercially reasonable efforts to cause the Financing Entity to cooperate, and ~~each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.~~3~~

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~[the FSM~~, will~~] shall cause the Financing Entity to~~,~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

~~[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~[the FSM] under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by ~~OPG~~[the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~[the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[4] ~~Note:~~ The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**8.06 Confidentiality**~~[5]

**8.06** ~~**8.07**~~ **Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.~~

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS **TRUSTEE** ~~FOR [FINANCING ENTITY]~~OF FAIR HYDRO TRUST

By: _____
Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, **AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■]Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~[referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

~~**(form of Assumption Agreement to be attached, once settled)**~~

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:21:33 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/7 |
| Description | TOR_2528-#23239361-v7-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/10 |
| Description | TOR_2528-#23239361-v10-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 143 |
| Deletions | 146 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 305 |

**Draft: November 14, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may

from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

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

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

**1.17 Currency**

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

**1.18 References to Acts of the Financing Entity**

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

**1.19 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation, in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

---

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[5] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[6]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

[6] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement. [7]

**4.03 Evidence of Satisfaction**

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

**5.04 Representations and Warranties**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured. [11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

---

[9] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution,

delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ken Kandeepan; Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas; Steen Hume (CAB); Scott Nelms (ENERGY) |
| **Cc:** | "stephen.ashbourne@blakes.com"; Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | FW: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Thursday, November 09, 2017 10:04:40 AM |
| **Attachments:** | #46682211v3_LEGAL_1_ - Change of Law Protection Agreement.docx<br>Compare.pdf<br>#46684849v3_LEGAL_1_ - Change of Law Process Agreement.DOCX<br>Compare.pdf |

Please find attached the Dealer's Counsel's comments on the Change of Law Protection Agreement and the Change of Law Process Agreement. Note that we have not yet received comments from OPG and these are only the Dealer's comments.

Toby

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

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** November 9, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com [osler.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

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

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation

est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Ontario Power Generation Inc., as the Manager and in its capacity as Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The FSM, as agent of the Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.03 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture.

**1.04 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.

**1.05 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.06 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.07 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.08 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.09 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.10 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.11 Counterparts; Electronic Delivery**

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

### 1.12 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.13 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.14 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.15 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.16 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.17 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to the Financing Entity, such reference shall

be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**

### 1.18 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become

due and payable[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account 5 Business Days prior to the fifteen day of each calendar month (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages.

**2.02 <u>Gross-up</u>**

All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[3].

[3] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. **[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

---

in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations and termination of the Trust Indenture, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) **[NTD: already covered in process certificate in section 3.01 of the Process Agreement]**

(c) **[NTD: already covered under Process Agreement.]**

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided in OPG's capacity as FSM) and addressed to the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(e) **[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. **[as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]**

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. Subject to Section 5.01(b), the Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. Subject to Section 5.01(b), the Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) the Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province will be a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to

further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv) confirms that the Indenture Trustee shall send notices to the Province in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[4]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a

[4] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

Finance Amount.[5] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

### 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[6]

[5] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

[6] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead be primary obligor under the Obligations Secured. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly. Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution,

delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), this Change of Law Protection Agreement shall not apply in respect of any new Primary Obligation following the date of such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]**

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations

in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this Agreement.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the **[later]** of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of a Termination Notice from the Province by the Indenture Trustee, the FSM and the Financing Entity, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and

(c) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement and all such Persons who are Beneficiaries derive their rights exclusively through the Indenture Trustee and such rights are subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[7] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" has the meaning ascribed thereto in the Process Agreement.

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[7] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation or otherwise constitutes a Finance Amount.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and the FSM.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means **[an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture] or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.] [NTD: To be discussed.]**

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

# EXHIBIT B
# ASSUMPTION NOTICE

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

~~**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**~~

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

~~**[NAME OF INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]***~~Ontario Power Generation Inc.*, as the ~~Financing Entity Trustee~~Manager and in its capacity as ~~trustee of the **[FINANCING ENTITY]**~~Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The ~~trustee~~FSM, as agent of the ~~Financing Entity in its capacity as~~ Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

~~OPG~~The FSM and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain

assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, ~~the Financing Entity Trustee,~~ the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same

may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### ~~1.02 Trustee to act in accordance with the Trust Indenture~~

~~Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.~~

### 1.02 ~~1.03~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.03 ~~1.04~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. ~~No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.~~

### 1.04 ~~1.05~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other ~~agreement~~Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.

### 1.05 ~~1.06~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.06 ~~1.07~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.07 ~~1.08~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.08 ~~1.09~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.09 ~~1.10~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

## 1.10 ~~1.11~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

## 1.11 ~~1.12~~ Counterparts; Electronic Delivery

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

## 1.12 ~~1.13~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

## 1.13 ~~1.14~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

## 1.14 ~~1.15~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## 1.15 ~~1.16~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.16 ~~1.17~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.17 ~~1.18~~ References to Acts of the Financing Entity ~~Trustee~~

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity ~~or the Financing Entity Trustee, as trustee of the Financing Entity,~~ is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to ~~(i)~~ the Financing Entity ~~or (ii) the Financing Entity Trustee~~, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity~~,~~). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**

### 1.18 ~~1.19~~ Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or

so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable~~, without Acceleration~~[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation ~~(without Acceleration)~~ in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, ~~as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation,~~ in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection~~Protection Account 5 Business Days prior to the fifteen day of each calendar month (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a~~

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

## 2.02 Gross-up

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the CollectionProtection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][3]

## 2.03 Absence of Set-off

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

## 2.04 Payment into CollectionProtection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited

[3] Under consideration.

thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid~~5~~3.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

[4] ~~This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.~~

~~5~~3 Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. **[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

### 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

### 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations and termination of the Trust Indenture, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03~~)~~.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements ~~and this Agreement~~, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~,provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained~~.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if ~~(a)~~ the Adherence Conditions applicable thereto have been satisfied~~; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation~~.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;**[NTD: already covered in process certificate in section 3.01 of the Process Agreement]**

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;**[NTD: already covered under Process Agreement.]**

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided in OPG's capacity as FSM) and addressed to the Province and the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; andii. confirmation that confirming that the FSM has delivered to the Province a certificateProcess Certificate in accordance with Section **[3.01]** of the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms**[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

[6] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

### 4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## ~~RIGHTS OF THE~~ PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. ~~(a)~~ to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. ~~(b)~~ **[as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]**

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~The~~Subject to Section 5.01(b), the Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. ~~The~~Subject to Section 5.01(b), the Indenture Trustee shall recognize the Province as being entitled to all

of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) the Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province will be a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv) confirms that the Indenture Trustee shall send notices to the Province in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Voting Rights under "Outstanding Notes"

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[74]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken**

[74] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

**any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

### 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[85] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

### 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

[85] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[96]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead be primary obligor under the Obligations Secured. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly. Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity

[96] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

### ~~7.04 Release of all Collateral~~

~~(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.~~

~~(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.~~

### ~~7.05 Right to Notice and Attend Meetings~~

~~The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.~~

**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by ~~the FSM or~~ the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), ~~the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.~~this Change of Law Protection Agreement shall not apply in respect of any new Primary Obligation following the date of such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]**

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish

the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this Agreement.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the **[later]** of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of a Termination Notice from the Province by the Indenture Trustee, the FSM and the Financing Entity, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and

(c) ~~(b) the date that a Termination Notice is received~~**[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of an Assumption Notice from the Province by the Indenture Trustee, the ~~FSM and~~Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o~~ *~~Ontario Power Generation Inc.~~*

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 ~~Force Majeure~~Intentionally Deleted

~~In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.~~

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement and all such Persons who are Beneficiaries derive their rights exclusively through the Indenture Trustee and such rights are subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

### 9.09 ~~9.08~~ Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN**~~**FAIR HYDRO TRUST, BY ITS** ~~**CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**~~**MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

**CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10]7 in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

~~["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]~~

~~["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]~~[11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" ~~means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager~~ has the meaning ascribed thereto in the Process Agreement.

[10]7 Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] ~~Note: To be confirmed if required.~~

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~"~~**Collection Account**~~" ~~has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "~~I~~investment ~~I~~interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

~~[~~"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.~~]~~

~~[~~"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.~~]~~[12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

[12] ~~Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation~~, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and (b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account~~ or otherwise constitutes a Finance Amount.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and ~~OPG~~the FSM.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture~~ as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Program Breach**" means **[an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture] or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.] [NTD: To be discussed.]**

"**Protection ~~Agreement Maximum"~~ ~~means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that ~~materially and~~ adversely affects (a) the ability of the Financing Entity to receive amounts ~~on~~in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that ~~materially and~~ adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest ~~and~~so that it can pay Obligations Secured, or (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager for the Financing Entity in accordance with the Act, is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the FSM provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to the FSM that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations the FSM has agreed to perform and assurances the FSM has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the FSM, and of the Province in accordance with the Act, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the FSM, as agent of the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

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

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF THE FSM

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) The FSM shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; or

(B) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) The FSM shall use commercially reasonable efforts:

(i) to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; and

(ii) to, after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of the FSM (or their respective designees, provided that such designees are also executive officers of the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and

coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to the FSM; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to the FSM.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that would be adverse to the Issuer, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast.

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) Not more than [■] Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will be revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of the FSM

The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall use commercially reasonable efforts

to cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of the Financing Entity enforceable against the Financing Entity in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(e) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

**5.02 <u>Representations and Warranties of the Province</u>**

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS[2]

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to the FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to the FSM (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to the FSM, the FSM shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be

[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

The FSM shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, the FSM will use commercially reasonable efforts to cause the Financing Entity to, use commercially reasonably efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any

[3] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured.

[4] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

acceleration of future fees, profits or other like amounts; provided that, this Section 6.05 shall not apply to any Obligations Secured under a Derivative Agreement.[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of the FSM under this Agreement which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach;

(b) any representation or warranty made by the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within sixty (60) days after written notice by the Province to the FSM of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[5] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Intentionally Deleted[6]**

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[6] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]**

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., SOLELY AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture)

governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF ELECTION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager for the Financing Entity in accordance with the Act, is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~the FSM provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~the FSM that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~the FSM has agreed to perform and assurances ~~OPG~~the FSM has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~the FSM, and of the Province in accordance with the Act, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity ~~or the Financing Entity Trustee~~**

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the FSM, as agent of the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~OPG~~THE FSM

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~or replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]~~

~~[2] Note: The tax documents to be provided to the Province are under consideration.~~

**2.02 Covenants**

(a) ~~OPG~~The FSM shall~~, as the FSM,~~ use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; or

~~(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;~~

~~(C) consolidate or merge with or into any other Person;~~

(B) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or(H) voluntarily dissolve or liquidate~~.

(b) ~~OPG~~The FSM shall use commercially reasonable efforts:

(i) ~~comply, and as the FSM~~to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;, and

~~(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;~~

(ii) ~~(iii)~~ to, after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~*the Change of Law Protection* Agreement would be accelerated~~, delayed or otherwise affected; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or *the Change of Law Protection* Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~OPG~~The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~OPG~~the FSM (or their respective designees, provided that such designees are also executive officers of ~~OPG~~the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation,

and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any* Primary Obligations arising *under or in connection with a Derivative Agreement.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d~~)(ii~~) of the Change of Law Protection Agreement.

### 3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~the FSM; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~c~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~the FSM.

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that would be adverse to the Issuer, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;~~(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the~~ provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are ~~as~~ reasonably contemplated in the Reviewed Documentation, ~~as to the type, scope and extent of the~~* ~~Primary Obligations arising~~ *~~thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to~~including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) ~~(c)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document

complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

~~(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast. ~~In determining~~

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum~~, the Province may have regard to (but not be bound by) the Initial Forecast.~~ from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) ~~Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.~~Not more than [■] Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will be revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~OPG~~the FSM

~~OPG~~The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall use commercially reasonable efforts to cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario~~, is duly qualified to carry on its business in each jurisdiction in which it carries on business,~~ and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto~~ and to own its property and carry on its business as currently conducted.(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto~~.

(c) ~~(d)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM

has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of ~~OPG~~the Financing Entity enforceable against ~~OPG~~the Financing Entity in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) ~~(e)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of ~~OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG~~the Financing Entity or in the ability of the Financing Entity to perform its obligations under ~~this Agreement or any~~the Program Agreements.

(e) ~~(g)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

~~(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.~~

~~(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or~~

any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## 5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

# ARTICLE VI
# ELECTION TO ASSUME APPROVED OBLIGATIONS[2]

## 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPGthe FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPGthe FSM (the "**Proposed Assumption Date**").

## 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPGthe FSM, OPGthe FSM shall provide the following information and documentation to the Province:

[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~ in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

[3] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured.

### 6.04 Cooperation to Implement the Assignment and Assumption

~~OPG~~The FSM shall cooperate with the Province and~~, as FSM,~~ will use commercially reasonable efforts to cause the Financing Entity to cooperate, and ~~each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3][4]

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~the FSM~~,~~ will use commercially reasonable efforts to cause the Financing Entity to, use commercially reasonably efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~.~~[4]; provided that, this Section 6.05 shall not apply to any Obligations Secured under a Derivative Agreement.[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~the FSM under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach;

(b) any representation or warranty made by ~~OPG~~the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured

[3][4] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

[4][5] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

within sixty (60) days after written notice by the Province to the FSM of such misrepresentation; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]

Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 ~~Confidentiality~~[5] Intentionally Deleted[6]**

[5][6] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]**

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., SOLELY AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN~~FAIR HYDRO TRUST, BY ITS ~~CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]~~MANAGER, ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____

Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■]Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~referenced as the Program Agreement Maximum in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation. ~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture~~ as of the date of this Agreement ~~or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any

other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

~~**(form of Assumption Agreement to be attached, once settled)**~~

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Mike Manning; Ken Kandeepan; Ronald Kwan; Veinot, Cindy (TBS); Mark Donaldson (MOF); Scott Nelms (ENERGY); Keley Katona (ENERGY); John Kim; Steen Hume (CAB) |
| **Subject:** | FW: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Thursday, November 16, 2017 8:37:05 PM |
| **Attachments:** | Change of Law Protection Agreement - Nov 16 (Osler)#2.docx<br>Blackline_24504581v1 - 24503896v2.pdf<br>Process Agreement (OPG_Torys_CommentsNov16).docx<br>Blackline_24491039v1 - 24491039v2.pdf |

---

Hopefully I have captured everyone who is usually copied on these.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** November-16-17 8:29 PM
**To:** 'ASHBOURNE, STEPHEN'; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.

Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)

<Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>

**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

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

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

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

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

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary

Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY

HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

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

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations as provided in this Agreement. From and after the delivery of a Payment Demand, the Province shall make payments in respect of Approved Obligations and receive Subrogation Amounts in accordance with the following procedures (the "**Limited Guarantee**"):

i. One Business Day prior to each Payment Date when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of the Aggregate Approved Obligations Amount in respect of such Approved Obligations on such Payment Date.

ii. On each Payment Date the Province shall pay the Aggregate Approved Obligations Amount to the Indenture Trustee and the Indenture Trustee shall deposit such amount to the Protection Account.

iii. On each Payment Date, the Paying Agent shall apply the Aggregate Approved Obligations Amount deposited to the Protection Account to pay in full to the applicable Beneficiaries the Approved Obligation Amount of each Beneficiary payable on such Payment Date; provided that if for any reason the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount available shall be applied in the order of priority in which the applicable Approved Obligations are payable in the section of the Trust Indenture which would otherwise be applicable to the making of such payments.

iv. The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "**Subrogation Amounts**").

(b) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include the loss represented by the failure to receive the principal and interest itself.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[3] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall

[3] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation as provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[4]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to related Subrogation Amounts and the rights contemplated Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

[4] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred.

### 4.02 Adherence Conditions

There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation. The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) OPG (acting in its capacity as FSM) delivers an officer's certificate addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence of the Primary Obligation, and (ii) one Business Day after the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that OPG has delivered to the Province all certifications required by the Province in connection with the incurrence of the Primary Obligations; and [**NTD: does this work for derivatives? They are often priced at the same time they are entered into.**]

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

**4.03 Evidence of Satisfaction**

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be

subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[5]

**5.04 Representations and Warranties**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[5] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[6]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by

[6] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[7]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

[7] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their rights hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

## SCHEDULE A
## DEFINED TERMS[8]

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of any Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, in respect of any Payment Date and an Approved Obligation, either:

(a) if no Acceleration has occurred in respect of any Obligation Secured, the amount payable on such Payment Date in respect of the Approved Obligation determined on the assumption that there are adequate amounts available under the applicable provisions of the Trust Indenture to pay all amounts referred to in the applicable section in full; and

(b) if an Acceleration has occurred in respect of any Obligations Secured, the aggregate amount that would be payable on such Payment Date in respect of the Approved Obligation under the applicable provisions of the Trust Indenture determined on the assumption that Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

[8] Province should not have veto rights over changes to the defined terms in the MTI. Province is given sufficient notice of all amendments by the terms of the various agreements.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][9]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

[9] Lawyers to discuss how to cleanse this Agreement of all references to the Process Agreement so that a copy of such agreement need not be provided to the rating agencies.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" means the has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] as amended, supplemented, restated or otherwise modified from time to time.

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured that has the effect of the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in Section 2.01(a)iv.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

# EXHIBIT B
# ASSUMPTION NOTICE

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

~~The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether< *the Adherence Conditions* >have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.~~

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the

case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised ~~through the Indenture Trustee~~ under, in accordance with and subject to the

limitations set forth in the Trust Indenture. ~~No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.~~

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, **substantially** in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay ~~the amount of~~ the Approved Obligations ~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity~~< ~~*to the Indenture Trustee*~~ >~~as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.~~**as provided in this Agreement. From and after the delivery of a Payment Demand, the Province shall make payments in respect of Approved Obligations and receive Subrogation Amounts in accordance with the following procedures (the "Limited Guarantee"):**

**i.** **One Business Day prior to each Payment Date when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of the Aggregate Approved Obligations Amount in respect of such Approved Obligations on such Payment Date.**

**ii.** **On each Payment Date the Province shall pay the Aggregate Approved Obligations Amount**> *to the Indenture Trustee* <**and**

[3] ~~The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.~~

**the Indenture Trustee shall deposit such amount to the Protection Account.**

**iii.** **On each Payment Date, the Paying Agent shall apply the Aggregate Approved Obligations Amount deposited to the Protection Account to pay in full to the applicable Beneficiaries the Approved Obligation Amount of each Beneficiary payable on such Payment Date; provided that if for any reason the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount available shall be applied in the order of priority in which the applicable Approved Obligations are payable in the section of the Trust Indenture which would otherwise be applicable to the making of such payments.**

**iv.** **The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "Subrogation Amounts").**

(b) ~~Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation, in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**").~~ For greater certainty, the Limited

[4] ~~Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.~~

Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits~~.~~**; provided that, for greater certainty, economic loss shall not include the loss represented by the failure to receive the principal and interest itself.**

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[53] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new

[53] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation **as provided for in Section 2.01(a)**. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries **as provided for in Section 2.01(a)** and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[64]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to **related Subrogation Amounts and** the rights contemplated ~~under~~ Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

[64] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

### 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

### 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries)

in its discretion may determine~~,provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained~~.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied **at the time the Primary Obligation was incurred**.

### 4.02 Adherence Conditions

~~The following~~**There** shall be ~~the~~**no** Adherence Conditions applicable in relation to a Primary Obligation **that is not a Funding Obligation. The following shall be**> *the Adherence Conditions* <**applicable in relation to a Primary Obligation that is a Funding Obligation**:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) ~~the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is~~

~~to be provided by such officers in their capacity as officers of OPG~~ **OPG** (acting in its capacity as FSM) ~~and~~**delivers an officer's certificate** addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence ~~or any amendment~~ of the Primary Obligation, and (ii) ~~on~~**one Business Day after** the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that ~~the FSM~~**OPG** has delivered to the Province ~~a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and~~ **all certifications required by the Province in connection with the incurrence of the Primary Obligations; and [NTD: does this work for derivatives? They are often priced at the same time they are entered into.]**

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement. ~~7~~

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive ~~distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture~~**the related Subrogation Amounts**, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under

~~7 Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut off opposite the indenture trustee.~~

the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation **to the extent of the payment by the Province in respect of the Approved Obligation** as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

**(b)** ~~(a)~~ The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated

to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[~~8~~5]

### 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee~~, in accordance with the terms of the Process Agreement,~~ that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[~~9~~6]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee

[~~8~~5] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.
[~~9~~6] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: ~~Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.~~[10] ~~Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.~~[11] the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

~~[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.~~

~~[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.~~

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[~~12~~7]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

[~~12~~7] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries ~~are not parties to this Agreement and accordingly any benefits derived~~**derive their rights** hereunder~~ shall arise exclusively~~ through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

**SCHEDULE A**
**DEFINED TERMS**[8]

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

**"Aggregate Approved Obligations Amount" means, in respect of any Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.**

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

**"Approved Obligation Amount" means, in respect of any Payment Date and an Approved Obligation, either:**

**(a)** **if no Acceleration has occurred in respect of any Obligation Secured, the amount payable on such Payment Date in respect of the Approved Obligation determined on the assumption that there are adequate amounts available under the applicable provisions of the Trust Indenture to pay all amounts referred to in the applicable section in full; and**

**(b)** **if an Acceleration has occurred in respect of any Obligations Secured, the aggregate amount that would be payable on such Payment Date in respect of the Approved Obligation under the applicable provisions of the Trust Indenture determined on the assumption that Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period.**

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

[8] **Province should not have veto rights over changes to the defined terms in the MTI. Province is given sufficient notice of all amendments by the terms of the various agreements.**

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13][9]

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

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

[13] Consider this longer version to avoid hard coding[9] Lawyers to discuss how to cleanse this Agreement of all references to the Process Agreement into this Agreementso that a copy of such agreement need not be provided to the rating agencies.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" means the has the meaning ascribed thereto in Section 2.01(~~b~~a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as ~~may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~"**Noteholder**" ~~has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"Payment Date" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) ~~any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii)~~ any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (~~iii~~ii) any amounts that would be

remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; ~~(iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v~~**and (iii**) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] **as amended, supplemented, restated or otherwise modified from time to time**.

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction ~~(i)~~ determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured~~, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in~~ **that has the effect of** the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

**"Subrogation Amounts" has the meaning ascribed thereto in Section 2.01(a)iv.**

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

# EXHIBIT B
# ASSUMPTION NOTICE

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on November-16-17 8:18:56 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24504581/1 |
| Description | #24504581v1<TorysAtWork> - 23239360-v12-CLPA - Protection Agreement |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24503896/2 |
| Description | #24503896v2<TorysAtWork> - Change of Law Protection Agreement - Nov 16 (Osler)#2 |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 78 |
| Deletions | 85 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 167 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[1] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[2]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[3]

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

---

[1] We do not believe OPG is entering into this Agreement as agent on behalf of the Trust. Rather, OPG is entering into this Agreement at the request of its shareholder, the Province, in order to satisfy the Province's reporting requirements regarding the Fair Hydro Plan.

[2] Blakes to advise what they would like to see as evidence of OPG's establishment of the Trust as a financing entity. OPG can send the Province the retainer of Computershare to act as issuer trustee to the Trust.

[3] Once agreements are settled, Province to provide draft notice.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the

designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

**2.02 Covenants**

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements (other than Funding Obligation Agreements), if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;[4]

(B) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement nor in the Change of Law Protection Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

[4] Note to the Province: This change was made to ensure that the Province does not have veto rights over the financial terms of the Funding Obligations (consistent with the overall agreement including in particular sections 3.01 and 3.04(a)).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation, and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[5]

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made

[5] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.

available for review to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

**3.02 Acknowledgment**

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, any two senior officers of OPG are authorized to deliver the certificate referred to in Subsection **[4.02(b)]** of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has delivered to the Province all certifications required by the Province in connection with the incurrence of the Primary Obligations in respect of which such certificate is delivered.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to

Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on

the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result

in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS[6]

[6] Note: Lawyers to discuss assumption mechanics.

**6.01 Election by the Province**

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Exploration Notice**"). The Exploration Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Exploration Notice to OPG (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Exploration Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province; and

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

**6.03 Settlement of Terms**

Within 30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends

that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section **[6.01]** of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

### 6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall use its commercially reasonable efforts to cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement][NTD: Subject to the input of the dealers.]**

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.[7]

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

[7] The Indenture Trustee was removed as a party to this Agreement as it is not subject to any of the provisions in this Agreement.

**SCHEDULE A**
**DEFINED TERMS**[8]

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement. **[NTD: To confirm if Change of Law Protection Agreement will attach a form of assumption.]**

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[8] Province should not have veto rights over changes to defined terms in the MTI. Province is given sufficient notice of all amendments by the terms of this Agreement.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Exploration Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement but, for greater certainty, excludes the "other amounts owing in respect of the funding obligations" in Section 2(2) of the General Regulation.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF EXPLORATION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.~~[, AS FINANCIAL SERVICES MANAGER[1]]~~**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] ~~OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.~~

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")~~[, as Financial Services Manager for the Financing Entity in accordance with the Act,]~~[1] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[2]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions ~~at the time the Approved Obligation is incurred or amended~~.

Prior to entering into this Agreement, ~~the [FSM]~~**OPG** provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~[the FSM]~~**OPG** that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[3]

This Agreement sets out the obligations ~~[the FSM]~~**OPG** has agreed to perform and assurances ~~[the FSM]~~**OPG** has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied~~< *in connection with the incurrence* >or amendment of an Approved Obligation~~, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

**[1] We do not believe OPG is entering into this Agreement as agent on behalf of the Trust. Rather, OPG is entering into this Agreement at the request of its shareholder, the Province, in order to satisfy the Province's reporting requirements regarding the Fair Hydro Plan.**

**[2] Blakes to advise what they would like to see as evidence of OPG's establishment of the Trust as a financing entity. OPG can send the Province the retainer of Computershare to act as issuer trustee to the Trust.**

**[3] Once agreements are settled, Province to provide draft notice.**

All things necessary to make this Agreement a valid and legally binding agreement of ~~[the FSM]~~**OPG**, and of the Province in accordance with the Act, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**
**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

**1.01 Interpretation**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the

designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

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

~~**1.10 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**~~

~~This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.~~

**1.10 ~~1.11~~ Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 ~~1.12~~ Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~[THE FSM]~~OPG

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~[the FSM]~~OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~[the FSM]~~OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~[the FSM]~~OPG shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~[the FSM]~~OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, ~~[the FSM]~~OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) ~~[The FSM]~~OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements **(other than Funding Obligation Agreements)**, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;[4]

~~(B) consent to the resignation of the Manager under the Management Agreement; or~~

**(B)** ~~(C)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) ~~[The FSM]~~**OPG** shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement **nor in the Change of Law Protection Agreement** shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 **(as amended, the "Indemnity Agreement")** and to the extent of any conflict between this Agreement**, the**

[4] **Note to the Province: This change was made to ensure that the Province does not have veto rights over the financial terms of the Funding Obligations (consistent with the overall agreement including in particular sections 3.01 and 3.04(a)).**

**Change of Law Protection Agreement** and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify ~~the FSM~~**OPG**, the ~~latter~~**Indemnity Agreement** shall prevail. ~~[For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]~~

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~[The FSM]~~**OPG** shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a ~~Primary~~**Funding** Obligation, and (ii) on the Business Day on which the financial terms of such ~~Primary~~**Funding** Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such ~~Primary~~**Funding** Obligation: [5]

(a) the material terms of the ~~Primary~~**Funding** Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the ~~Primary~~**Funding** Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

**[5] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.**

(d) a statement confirming that any disclosure made in respect of the ~~Primary~~**Funding** Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the ~~Primary~~**Funding** Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination ~~and the Province provided its written consent to such use or dissemination~~, other than where such disclosure was substantially the same as a disclosure previously made ~~and for which the Province had previously provided its written consent~~;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the ~~Primary~~**Funding** Obligation is incurred ~~or amended~~, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the ~~Primary~~**Funding** Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars ~~and in respect of which~~**will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:**

**(i)** **where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the** >*hedged value expressed in*< **Canadian dollars; and**

**(ii)** **where** a Derivative Agreement has **not** been entered into to hedge related currency exposures**, Repayments under such obligations** shall be valued ~~for this purpose~~ on the basis of the <~~*hedged value expressed in*~~>**noon spot rate for conversions of any currencies into** Canadian dollars ~~for so long as such Derivative Agreement is in good standing~~.

**3.02 Acknowledgment**

The ~~parties acknowledge that~~**Province acknowledges and agrees that, concurrent with the delivery of** the Process Certificate ~~is the "process~~**pursuant to Section 3.01 of this Agreement, any two senior officers of OPG are authorized to deliver the** certificate~~"~~ referred to in Subsection **[4.02(b)]** of the Change of Law Protection Agreement **to the Indenture Trustee confirming that OPG has delivered to the Province all certifications required by the Province**> *in connection with the incurrence* <**of the Primary Obligations in respect of which such certificate is delivered**.

### 3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~[the FSM]~~**OPG**; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~[the FSM]~~**OPG**.

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently ~~with the consent of the Province~~ if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further

Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars ~~and in respect of which~~**will be valued at the time to be determined**> *for the purposes of this Section 4.01*< **in accordance with the following:**

**(i)** **where** a Derivative Agreement has been entered into to hedge related currency exposures ~~shall be valued~~<~~*for the purposes of this Section 4.01*~~>**, Repayments under such obligations shall be valued** on the basis of the hedged value expressed in Canadian dollars ~~for so long as such Derivative Agreement is in good standing.~~**; and**

**(ii)** **where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.**

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~[the FSM]~~OPG

~~[The FSM]~~**OPG** represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) ~~OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act.~~ OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or

any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS[6]

**6.01 Election by the Province**

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to ~~[the FSM]~~**OPG** a notice in the form of Exhibit A (an "~~**Election Notice**~~"), ~~which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election~~**Exploration Notice"). The Exploration** Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the ~~Election~~**Exploration** Notice to ~~[the FSM]~~**OPG** (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the ~~Election~~**Exploration** Notice to ~~[the FSM], [the FSM]~~**OPG, OPG** shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

~~[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement – to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.~~

**[6] Note: Lawyers to discuss assumption mechanics.**

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province; **and**

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and.

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section **[6.01]** of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

[The FSM]**OPG** shall cooperate with the Province and**, as FSM,** will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~[the~~**OPG, as** FSM~~]~~**,** shall **use its commercially reasonable efforts to** cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement**~~.[4]~~**][NTD: Subject to the input of the dealers.]**

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~[the FSM]~~**OPG** under this Agreement, which continues for thirty (30) days after written notice by the Province to ~~[the FSM]~~**OPG** of such default or breach;

(b) any representation or warranty made by ~~[the FSM]~~**OPG** in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to ~~[the FSM]~~**OPG** of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

~~[4]The Trust Indenture will need to permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.~~

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~[the FSM]~~**OPG**, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, ~~[the FSM]~~**OPG** and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~the FSM~~**OPG**:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.~~, [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]~~**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.[7]

**COMPUTERSHARE TRUST COMPANY OF CANADA**, ~~**AS TRUSTEE OF**~~**in its capacity as trustee of FAIR HYDRO TRUST , as Issuer**

**By:** **ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager**

By: _____

Name:
Title:

~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**~~

By: _____

Name:
Title:

[7] **The Indenture Trustee was removed as a party to this Agreement as it is not subject to any of the provisions in this Agreement.**

**SCHEDULE A**
**DEFINED TERMS**[8]

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in ~~Section 6.01.~~**the Change of Law Protection Agreement. [NTD: To confirm if Change of Law Protection Agreement will attach a form of assumption.]**

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

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

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar

[8] **Province should not have veto rights over changes to defined terms in the MTI. Province is given sufficient notice of all amendments by the terms of this Agreement.**

transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"~~**Election**~~**Exploration Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement **but, for greater certainty, excludes the "other amounts owing in respect of the funding obligations" in Section 2(2) of the General Regulation**.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount ~~[~~referenced as the Program Agreement Maximum **and determined** in accordance with Article IV~~]~~.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including

any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ~~ELECTION~~EXPLORATION NOTICE**

Document comparison by Workshare Compare on November-16-17 8:14:42 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24491039/1 |
| Description | #24491039v1<TorysAtWork> - Process Agreement (Torys'CommentsNov15) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24491039/2 |
| Description | #24491039v2<TorysAtWork> - Process Agreement (OPG/Torys'CommentsNov16) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 122 |
| Deletions | 106 |
| Moved from | 3 |
| Moved to | 3 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 234 |

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Ken Kandeepan; Gadi Mayman; Ronald Kwan |
| **Cc:** | Tobias P. Whitfield (MOF) |
| **Subject:** | FW: Change of Law Protection Agreement |
| **Date:** | Thursday, November 16, 2017 8:27:41 PM |

Fyi - awaiting a further version.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** November-16-17 6:51 PM
**To:** 'Milligan, Peter'; ASHBOURNE, STEPHEN; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement

Hi all – some conforming changes need to be made to the Protection Agreement to reflect the changes proposed in the Process Agreement. Torys will circulate a revised draft of both Agreements shortly. Thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** November-16-17 6:34 PM
**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** Change of Law Protection Agreement

Attached is a comment draft of the Change of Law Protection Agreement prepared by Osler. This comment draft has not been reviewed by the dealers and is subject to any comments the dealers may have.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Tuesday, November 14, 2017 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on

November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

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

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

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

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

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

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | "LEE John -TREASURY" |
| **Cc:** | Mike Manning; James Devine; Carlos Yep; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); John Psinas; John Kim; Ronald Kwan; Tom McKinlay (MAG); Anna Strathy; Mark Donaldson (MOF); "ASHBOURNE, STEPHEN" |
| **Subject:** | FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement |
| **Date:** | Friday, November 03, 2017 8:52:35 AM |
| **Attachments:** | 23239361-vpdf-CLPA - Process Agreement.PDF<br>23239360-vpdf-CLPA - Protection Agreement.PDF |

---

Hi John

As discussed previously pls find attached the Protection Agreement and the accompanying process document which have been forwarded to Torys by Steven Ashbourne last evening. Pls provide us with your consolidated comments including feedback from the dealers, E&Y and where appropriate the Rating Agency.

Based on the timeline that we discussed on Tuesday, your comments will allow decision makers such as Gadi to provide guidance next week on resolving any material issues that are identified in your response.

Thanks

Ken k

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM ~~[~~established~~]~~ the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program ~~Agreement~~Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act ~~and the OIC~~, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated~~,~~ Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

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

### 1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

### 2.01 Deliveries to the Province

(a) Not less than ■15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) ~~Not~~Unless the Financing Entity is subject to the PILs Regime, not less than ■15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. ~~Thereafter~~ In addition, OPG shall promptly deliver written notice to the Province ~~a copy~~ of any ~~proposed change to or replacement of such~~change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.

(c) Not less than ■10 Business Days prior to (i) any proposed change~~, addition~~ or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, ~~addition or~~ supplement to the Transaction Document and any such additional of replacement Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax ~~assessment~~assessments not more than ■10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[~~1~~2]

### 2.02 Covenants

(a) OPG shall, as the FSM, cause the Financing Entity to:

[~~1~~2] Note: The tax documents to be provided to the Province are under consideration.

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, ~~not less than ■~~on the earlier of (i) one Business ~~Days~~Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to ~~the~~such Primary Obligation:

(a) the material terms of the ~~Funding Obligations~~Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, ~~pricing and third party fees;~~[2]interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

[2] ~~Note: Level of detail required by the Province is under consideration. Province to consider whether it would like further details regarding Principal Obligations, Redemption Obligations, Interest Obligations, Hedging Obligations, Third Party Expense Obligations or Other Funding Obligations. In desirable, particulars regarding Hedging Obligations and the market in which notes are issued to be considered.~~

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) ~~if the Primary Obligation is a [borrowing],~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) ~~has been provided to the Province in accordance with Subsection 2.01(c); and~~is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(c) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed ~~disclosure document~~Disclosure Document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast

setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has ~~irremovably~~irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or ~~the~~any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict

with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within ■20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate, and each shall use its best efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

the Financing Entity for the provision of on-going services to the Financing Entity, permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement);

(b) any representation or ~~warrant~~warranty made by OPG in this Agreement, ~~or~~ any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made; or

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG ~~at its option~~, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide ~~notice~~a Suspension Notice to the Indenture Trustee ~~that a Breach Event has occurred and,~~, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement~~, that the Limited Guarantee does not and will not apply to any Primary Obligations that may thereafter be incurred or amended by or on behalf of the Financing Entity.~~[5].

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

[5] ~~NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.~~

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**[5]

~~[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.]~~

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____

Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____

Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" ~~means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services~~has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Administrative Services Agreement**" ~~means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity~~has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

~~"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.~~

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

[6] Note: To be confirmed if required.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

~~"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation [as of the date of this Agreement].~~

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

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

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" ~~means the management agreement dated [■], 2017 between the Manager and the Financing Entity~~has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Manager**" ~~means OPG, in its capacity as manager of the Financing Entity under the Management~~has the meaning ascribed thereto in the Change of Law Protection Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

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

"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"~~**Supplemental Reserve Account**~~**Substantially in the Form**" has the meaning ascribed thereto in ~~the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and

priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], ~~2017, as amended, supplemented, restated or otherwise modified from time to time.~~2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

Document comparison by Workshare Compare on Friday, November 03, 2017 6:38:01 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/6 |
| Description | TOR_2528-#23239361-v6-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/7 |
| Description | TOR_2528-#23239361-v7-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 73 |
| Deletions | 54 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 131 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations ~~secured~~, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM ~~[~~established~~]~~ the Financing Entity as a "financing entity"~~[1]~~ (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which

~~[1] Note to Draft: Consideration is being given by MOE to possible changes to the Regulation to accommodate the proposed use of a "trust", as a "financing entity".~~

the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

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

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days

comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (~~a~~i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (~~b~~ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section ~~1.18~~1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and ~~[~~(ii) amounts required to be deposited by or on behalf of the Financing

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] ~~Note:~~ Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary ~~Obligation~~Obligations and an "investment interest" is therefore crucial~~. Unfortunately, the nexus is not straightforward~~. Blakes is considering how to more precisely connect these concepts.

Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.][3]

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][4][3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

[3] Note: OFA to confirm whether the Limited Guarantee will extend to require the Province to fill sinking fund and collateral accounts during the period when the Province is required to make payments. If not, then we will need to consider the impact on ratepayers and the potential impact on the CEA calculations, which will have been based originally on these deposits being made during particular reference periods.

[4] Province to advise on extension of a tax gross up. We assume this is necessary, although we have not discussed it specifically and it may be that we delete this provision on the basis that the determination of a tax gross up (and the Province's liability for it) will be based on the inclusion of that concept in the Trust Indenture itself[3] Under consideration.

## 2.04 Payment into Collection Account in Satisfaction

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[54] Upon a payment having been made by or on behalf of the Province into the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[65].

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

## 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

[54] ~~Note:~~ This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently. ~~To be discussed with Torys.~~

[65] ~~Note:~~ Consider ~~if~~how Beneficiary rights under Obligations Secured ~~can in fact be affected in this way~~will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee ~~insofar as the Beneficiaries rights against the financing entity are to be affected~~under this Agreement.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03].

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) ~~if the Primary Obligation is a [borrowing][7],~~ at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[~~8~~6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under

[7] ~~Under consideration. Need to ensure that non-conventional instruments (capital rather than debt) are caught in the maximum test.~~

[8] ~~Note: The~~[6] Use of the concept of "repayments" under the OFHPA ~~take account of contemplated refinancings. There is some risk that an anticipated refinancing would not manifest as contemplated, in which case the amount financed (and subject to the Limited Guarantee) could exceed the Protection Agreement Maximum and result in a balloon payment obligation~~for this purpose is under consideration.

Approved Obligations,[9] do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, ~~not less than ■~~one Business ~~Days and not more than ■ Business Days~~Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, ~~not less than ■~~one Business ~~Days and not more than ■~~Day prior to the earlier of (i) one Business ~~Days~~Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. ~~if the Primary Obligation is a [borrowing],~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided ~~notice~~a Suspension Notice to the Indenture Trustee ~~that a Breach Event has occurred and that the Limited Guarantee does not apply to any further Primary Obligations that are incurred.~~[10], the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the

[9] ~~Note: If certain financing entity obligations are guaranteed under a one-off agreement, the interaction between the one-off guaranteed amount and Approved Obligations that are looked at to determine if incurrence of a new Primary Obligation is within the Protection Agreement Maximum will need to be considered.~~

[10] ~~NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.~~

applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

### 5.01 Assignment and Subrogation

Upon paying an amount in respect of an Approved Obligation:

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (~~a~~i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (~~b~~ii) the benefits of the related Collateral and (~~c~~iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the

extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

### 5.03 Voting Rights under "Outstanding Notes"

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[11][7]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

### 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity [and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[12][8]

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

TheFollowing the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

[11][7] Note: This concept shouldneeds to be reflected in the Trust Indenture to be effective. Additional scenarios where the Province's rights as an affiliate of OPG may differ from what is expected are to be identified in the underlying Program Agreements.

[12] Note:[8] General Regulation mustto be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use ~~[commercially reasonable~~best efforts~~]~~ to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.~~13~~9

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

~~13~~9 ~~Note:~~ Further details regarding obtaining of third party consents and rating agency approvals to be considered.

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

**8.01 Suspension Notice**

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM ~~to~~or the Province ~~and~~to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic

communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]

c/o Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for [Financing Entity]
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**9.06 Confidentiality**~~

~~[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. Note that this Agreement will become part of the package of rights acquired by investors and counterparties and so it is unclear to what extent confidentiality can or should be preserved in these circumstances.]~~

**9.06 ~~9.07~~ No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 ~~9.08~~ Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.08 ~~9.09~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[14]10 in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, or any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

[14]10 Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] Note: To be confirmed if required.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are ~~[, or the office of the Indenture Trustee is,]~~ authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation ~~[as of the date of this Agreement]~~.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act ~~[as of the date of this Agreement]~~.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act ~~[as of the date of this Agreement]~~.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act ~~[as of the date of this Agreement]~~.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

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

"**Original Currency**" has the meaning ascribed thereto in Section ~~1.18~~1.19(a).

[12]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

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

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and ~~[~~(b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.~~]~~[15]

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~[~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~]~~.

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.[16]

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

~~[15] Note: Possible simplification of definition structure under consideration.~~

~~[16] Note: An alternative would be to expressly state the Program Agreement Maximum amount and the process by which this amount is determined in this Agreement.~~

(v) ~~there is~~the implementation of a change in the organization or structure of the IESO or Ontario's electricity market[17] undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction ~~[in a final and non-appealable judgement]~~[18](i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ~~ability of~~Financing Entity's receipt of amounts in respect of its Investment Interest and (ii) issues a decision or an order preventing the Financing Entity ~~to receive~~from receiving amounts on its Investment Interest ~~so that it can~~, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured~~.~~ that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section ~~1.18~~1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

~~[17] Note: Consider more clarity to "Ontario's electricity market".~~
~~[18] Under consideration to assess the marketability implications of this phrase.~~

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

Document comparison by Workshare Compare on Friday, November 03, 2017 6:38:58 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/8 |
| Description | TOR_2528-#23239360-v8-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/9 |
| Description | TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 86 |
| Deletions | 120 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 206 |

| | |
|---|---|
| **From:** | Anna Strathy on behalf of Charles Sousa (MOF) |
| **To:** | Mike Manning; @FIN-R-TOR.7QueensParkCres.Trillium.Boardroom (MOF); Ghiassi, Ali (MOF); Marianne Nguyen (MCYS); Scott Thompson (CAB); Sonia Parisi (MGS); David McLean (MOF); Jonathan Tekle (CAB); Helmut Zisser (MOF); Linda Gibney (MOF); Anthony Reiss (MGS); Gadi Mayman; Ronald Kwan; Ken Kandeepan; Veinot, Cindy (TBS); Scott Nelms (ENERGY); Malle Hanslep (MOF) |
| **Cc:** | Visca, Marie (MOF); Tobias P. Whitfield (MOF); Michael Waterston (MOF); Mark Donaldson (MOF) |
| **Subject:** | FW: DM and Minister Briefing \| Change of Law Assumption Agreement (Fair Hydro Plan) Submission |

-----Original Appointment-----
From: Sousa, Charles (MOF) [mailto:Charles.Sousa@ontario.ca]
Sent: Monday, September 18, 2017 4:25 PM
To: Sousa, Charles (MOF); @FIN-R-TOR.7QueensParkCres.Trillium.Boardroom (MOF); Ghiassi, Ali (MOF); Marianne Nguyen (MCYS); Scott Thompson (CAB); Sonia Parisi (MGS); David McLean (MOF); Jonathan Tekle (CAB); Helmut Zisser (MOF); Linda Gibney (MOF); Anthony Reiss (MGS); Gadi Mayman; Ronald Kwan; Ken Kandeepan; Veinot, Cindy (TBS); Scott Nelms (ENERGY); Malle Hanslep (MOF)
Cc: Visca, Marie (MOF); Tobias P. Whitfield (MOF); Michael Waterston (MOF); Mark Donaldson (MOF)
Subject: DM and Minister Briefing | Change of Law Assumption Agreement (Fair Hydro Plan) Submission
When: Thursday, September 21, 2017 9:00 AM-9:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Trillium Boardroom

| | |
|---|---|
| **From:** | Mike Manning on behalf of Whitfield, Tobias P. (MOF) |
| **To:** | Gadi Mayman; Mike Manning; Ronald Kwan; James Devine; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Scott Nelms (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF); Elcombe, James (MOF) |
| **Subject:** | FW: Discussion regarding FHP issues |
| **Start:** | Monday, September 11, 2017 10:00:00 AM |
| **End:** | Monday, September 11, 2017 11:00:00 AM |
| **Location:** | Call (number to be circulated) |

---

-----Original Appointment-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Friday, September 08, 2017 1:57 PM
To: Whitfield, Tobias P. (MOF); Mike Manning; Ronald Kwan; James Devine; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Scott Nelms (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF); Elcombe, James (MOF)
Subject: Discussion regarding FHP issues
When: Monday, September 11, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Call (number to be circulated)

We would like to have a call to discuss the Province's position on how the subordinated debt would be dealt with in the context of the support agreement, as well as the acceleration issues raised by OPG.

Please let me know if this time doesn't work, and we can try to find a different time.

Toby

| | |
|---|---|
| **From:** | Mike Manning on behalf of Whitfield, Tobias P. (MOF) |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan; James Devine; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Scott Nelms (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF); Elcombe, James (MOF) |
| **Subject:** | FW: Discussion regarding FHP issues |
| **Start:** | Monday, September 11, 2017 10:00:00 AM |
| **End:** | Monday, September 11, 2017 11:00:00 AM |
| **Location:** | Call (number to be circulated) |

---

-----Original Appointment-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Friday, September 08, 2017 1:57 PM
To: Whitfield, Tobias P. (MOF); Mike Manning; Ronald Kwan; James Devine; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Scott Nelms (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF); Elcombe, James (MOF)
Subject: Discussion regarding FHP issues
When: Monday, September 11, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Call (number to be circulated)

We would like to have a call to discuss the Province's position on how the subordinated debt would be dealt with in the context of the support agreement, as well as the acceleration issues raised by OPG.

Please let me know if this time doesn't work, and we can try to find a different time.

Toby

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:33:49 PM
**Attachments:** Blackline_24180663v1 - 24180663v3.pdf
**Importance:** High

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on

Friday. ENERGY LSB is hoping for comments by tomorrow. I don’t think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

**CONFIDENTIAL**
**FOR DISCUSSION PURPOSES ONLY**

# ONTARIO REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

## FEES

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"comparison fees" means ~~typical fees~~**market comparable fees, expressed as a per annum percentage rate,** charged by ~~[service providers?~~**asset** managers~~?]~~ ~~in Ontario~~ **in Canada and any other jurisdiction as may be determined by the Board** for services that are similar to the services provided by the Financial ~~Service Manger~~**Services Manager** under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds ~~in Ontario~~,

(b) the scope of the services provided, ~~and~~

(c) the level of the services provided**, and**

**(d) the amount of assets under management**;

**"forecast interest rate" means, in respect of each tranche of funding obligations, an interest rate forecast to be applicable to such tranche of funding obligations after taking into account (i) the interest rate for debt of or guaranteed by the Province of Ontario with a corresponding term or duration, (ii) the estimated credit spread for such tranche of funding obligations with a comparable term and based on the type of instrument and risk of the issuer, and (iii) anticipated fees and commissions expected to be payable in connection with the issuance of such tranche of funding obligations.**

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year~~, other than any refinancing~~;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances**, as** at **12:00 am on** the ~~start~~**first calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities,

2

B = the sum of the balances**, as** at **11:59 pm on** the ~~end~~**last calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to **the management and administration of financing entities and the investment asset, including in relation to** funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) ~~For the purposes of subsection 19 (3) of the Act, fees may be~~**Out-of-pocket costs and expenses of the financing entities incurred by the Financial Services Manager on behalf of the financing entities and for which the Financial Services Manager is entitled to reimbursement under a** management agreement with **such financing entity shall not constitute a fee** established and charged by the Financial Services Manager ~~to financing entities for the recovery of costs and expenditures, as provided for in section 7.~~**under subsection 19(3)**

**of the Act.[1] The costs and expenditures of the financing entities referred to in this subsection (3)** may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations**;**

2. **Banking fees, including structuring fees or work fees;**

3. Fees of issuing and paying agents for funding obligations**;**

4. **Fees of trustees;**

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns**;**

6. Fees of legal counsel**;**

7. **Rating agency fees; and**

8. Filing or registration fees.

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those provided for under this ~~R~~egulation.

**Base fee, 2018 and 2019**

**3.** Subject to section 5.1, the base fee for a month in the ~~year~~**calendar years** 2018 **and 2019** shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation greater than $10 billion**

**4.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~**2019** if the average annual funding obligation for the preceding year was greater than $10 billion.

**[1] These represent third party costs and expenses of the financing entity, not part of the fees that OPG is charging the financing entity. From time to time, OPG may have to pay these upfront costs on behalf of financing entities but they will be a pass-through cost for which OPG would simply be reimbursed by the financing entity. Other than OPG's fees, the costs and expenditures of financing entities are not subject to OEB review under the Act but rather are recoverable as expenses through the CEA (and through IESO during the moratorium). Subsection (3) in this draft was added for greater certainty to ensure there was no misunderstanding.**

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation $10 billion or less**

**5.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~2019 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

4

B = the average monthly funding obligation for the preceding month.

**Board review of base fee**

**5.1** If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee. If the Board refuses to approve the proposed base fee submitted by the Financial Services Manager under section 9, the Board shall provide its reasons for such refusal and ~~may~~ make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees~~.~~ and based on the methodology used in the formulas set out in section 3, 4 and 5.

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula~~:~~ (which in respect of individual tranches may result in a negative number):

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite the circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

**Board review of variable fee** 5

**6.1** If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is ~~[unreasonable]~~**not consistent with market comparable forecast interest rates**, the Board may refuse to approve the proposed fee**. If the Board refuses to approve the proposed variable fee submitted by the** Financial Services Manager **under section 9, the Board shall provide its reasons for such refusal** and ~~may~~ make recommendations to the Financial Services Manager regarding the forecast interest rate that is ~~reasonable.~~**consistent with market comparable forecast interest rates.**

~~**Fees for costs and expenditures**~~

~~**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.~~

~~(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:~~

~~1. Underwriters or selling agents for funding obligations.~~

~~2. Banking fees.~~

3. ~~Fees of issuing and paying agents for funding obligations.~~

4. ~~Fees of trustees.~~

5. ~~Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.~~

6. ~~Fees of legal counsel.~~

7. ~~Filing or registration fees.~~

8. ~~Fees of any third party independent consultants required to be retained under the Act.~~

~~**Board review of fees for costs, expenditures**~~

~~**7.1** If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.~~

**Charging of fees**

**8.** (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee is a negative amount, it shall be deducted from the base fee payable in the following calendar year in twelve equal monthly instalments.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

**Submissions to Board re fees**

**9.** (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section ~~5.1, 6.1~~**5.1** and ~~7.1~~**6.1.**

(2) The first submission **for proposed fees to be charged for a two year period commencing in 2018** shall be made no later than [October 31, 2017].

(3) ~~The submission for each calendar year starting with 2019~~**Submissions for proposed fees to be charged for a two year period commencing in 2020 and for every two year period thereafter** shall be made no later than [120 days] before the start of the **applicable two** year **period**.

(4**) Submissions to amend the proposed fees for a month in any year following approval of the proposed fees for any two year period may be made from time to time but no more frequently than once in any 12 month period and no later than 120 days before the start of the year in which such fees are proposed to be effective.**

**(5**) If the Board makes recommendations as described in section ~~5.1, 6.1~~**5.1** or ~~7.1,~~**6.1,** the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees;

(b~~)~~ ~~a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;~~

(~~c~~) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered; **and**



(~~d~~**c**) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations~~; and~~**.**

(~~e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities]~~ **6) Until the Board has approved the fees in respect of any two year period, the fees approved for the prior two year period shall remain in effect.**

**Board approval, general**

**10.** (1) ~~The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.~~

~~[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]~~

~~(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.~~(3) For the purpose of determining whether to approve a proposed fee~~,~~ **described in section 5.1 or 6.1,**

**(a)** the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee~~.~~**; and**

(~~4) For the purpose of determining whether to approve a proposed fee,~~ **b)** the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

[OLC Note re DEFERRAL ACCOUNT:
1. You included the following instruction that would require the FSM to establish a deferral account -- what is the authority for imposing this requirement? Recall that in subs. 34 (1) of the Act, the Board is given authority to require that the FSM maintain specific accounts.

2. ENE LSB note: *Necessity of this provision to be discussion with the OEB given that fees will be recovered as a financing entity expense through the Fair Hydro program and not as part of the fees to be approved by the Board.*]

*[If needed, deferral provision could be along the following lines: The Financial Services Manager shall establish a deferral account in connection with subsection 19 (3) of the Act that records costs incurred by the Financial Services Manager in providing services referred to in section 1 during the period from July 1, 2017 to the day before the date of the Board's first order under subsection 19 (3) of the Act.]*

[OLC Note re FINANCE AMOUNT: You included the following instruction, but I think this more properly belongs somewhere in section 5 of O. Reg. 206/17? In fact, are these fees not already covered in that section (perhaps under "financing entity expenses"?). Please confirm: *Fees established by the Financial Services Manager and approved by the Board, and any applicable taxes on such fees, shall be included in the definition of "expenses" for the purposes of determining finance amounts under the Act.*]

*[Notes Re: Determining Fees:*

*(1) An alternative approach involves the Board approving the initial base fee and variable fee, with any changes to those fees being triggered by the FSM submitting to the Board proposed amendments to those fees (or the Board triggering a review on its own initiative (not more than once per year). However, because interest rates (and hence forecast interest rates) change over time (and can change even within a year), consider whether variable B of the variable fee should be approved annually. Similarly, because trends for "market comparable fees charged by service providers for similar services" change over time, consider whether variable A of the base fee should be approved annually.]*

*(2) Once every three years after the Board has approved the fees submitted by the Financial Services Manager under section 3, or more frequently if the Board requires but not more frequently than annually, the Board may require the Financial Services Manager to engage, on behalf of and at the cost of the financing entities, a third-party independent consultant to review and advise as to the appropriate benchmarks and range of values for [annual rates?] used for the purpose of determining the base fee and forecast interest rates used for the purposes of determining the variable fee and shall give due consideration to such advice.]*

**Commencement**

**x. This Regulation comes into force on the day it is filed.**

Document comparison by Workshare Compare on September-23-17 6:39:45 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/1 |
| Description | #24180663v1<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/3 |
| Description | #24180663v3<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 58 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:30:48 PM |

---

**From:** John Kim
**Sent:** Wednesday, September 27, 2017 4:20 PM
**To:** Ken Kandeepan ; Mike Manning ; James Devine
**Cc:** Carlos Yep ; Ronald Kwan
**Subject:** Re: Draft Fees Regulation

Looping Ron in the email chain.

Sent from my iPhone

On Sep 27, 2017, at 3:42 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Some minor comments. All under Base Fee section.
> I'd convey that the compromise of 5bps is still generous more explicitly. I think that was Jim's comment. The rest of the comments imply it but could be useful.
> "10bps is high. We would recommend a compromise of 5bps to start, which we feel is still generous and to be reviewed in a year."
> Where it says "This is consistent with the actual fees paid by OPG and the Province…", consider adding "also" to imply that it is referring to the 1-2bps for passive fixed income funds.
> "From a significant economics of the financing entity,…" I wasn't quite sure what this is trying to say. Could be just me.
>
> **From:** Ken Kandeepan
> **Sent:** Wednesday, September 27, 2017 2:54 PM
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** RE: Draft Fees Regulation
> Hi Mike at al
> Pls see the draft email back to Scott Nelms, all credit to Carlos. Mike you may want to send it to Scott with cc's to the usual suspects, if you have any logistical issues, I am happy to do so, I will wait until 4.30 and if I don't hear from you will send it out.
> Thanks
> Ken k
>
> **From:** Carlos Yep
> **Sent:** Wednesday, September 27, 2017 2:43 PM
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** FW: Draft Fees Regulation
> **Importance:** High
> Ken
> Here are some thoughts …
> Base Fee: 10bps is high. We recommend a compromise of 5bps to be reviewed in a year.
> As background, market investment manager fees are 1-2bps for passive fixed

income funds.
This is consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund‘s index fixed income funds. The index funds require constant rebalancing by the investment manager.
From a significant economics of the financing entity, OPG is getting 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%.
Ie. For each $2.5B of Global Asset X 44% equity injection would contribute $55million net revenue to OPG for each of 10 years and would be a reduced amounts for the following 30 years as the Global Asset is paid down.
Variable Fee: We recommend going back to the original proposal of “… not more than plus/minus 1% … on the net annual funding obligation …”
That means deleting column 1 and item 2 of the table.
Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott’s email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

---

**From:** Mike Manning
**Sent:** Tuesday, September 26, 2017 1:53 PM
**To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High
I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.
Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High
Hi Gadi,
I hope NYC is going well and you are finding air conditioning.
We have been working with Steen’s team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys’ markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?

- The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
- It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:30:48 PM

---

**From:** John Kim
**Sent:** Wednesday, September 27, 2017 4:20 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Cc:** Carlos Yep <Carlos.Yep@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Re: Draft Fees Regulation

Looping Ron in the email chain.

Sent from my iPhone

On Sep 27, 2017, at 3:42 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Some minor comments. All under Base Fee section.
> I'd convey that the compromise of 5bps is still generous more explicitly. I think that was Jim's comment. The rest of the comments imply it but could be useful.
> "10bps is high. We would recommend a compromise of 5bps to start, which we feel is still generous and to be reviewed in a year."
> Where it says "This is consistent with the actual fees paid by OPG and the Province…", consider adding "also" to imply that it is referring to the 1-2bps for passive fixed income funds.
> "From a significant economics of the financing entity,…" I wasn't quite sure what this is trying to say. Could be just me.
>
> **From:** Ken Kandeepan
> **Sent:** Wednesday, September 27, 2017 2:54 PM
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** RE: Draft Fees Regulation
> Hi Mike at al
> Pls see the draft email back to Scott Nelms, all credit to Carlos. Mike you may want to send it to Scott with cc's to the usual suspects, if you have any logistical issues, I am happy to do so, I will wait until 4.30 and if I don't hear from you will send it out.
> Thanks
> Ken k
>
> **From:** Carlos Yep
> **Sent:** Wednesday, September 27, 2017 2:43 PM
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** FW: Draft Fees Regulation
> **Importance:** High
> Ken

Here are some thoughts …
Base Fee: 10bps is high. We recommend a compromise of 5bps to be reviewed in a year.
As background, market investment manager fees are 1-2bps for passive fixed income funds.
This is consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. The index funds require constant rebalancing by the investment manager.
From a significant economics of the financing entity, OPG is getting 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%.
Ie. For each $2.5B of Global Asset X 44% equity injection would contribute $55million net revenue to OPG for each of 10 years and would be a reduced amounts for the following 30 years as the Global Asset is paid down.
Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"
That means deleting column 1 and item 2 of the table.
Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

---

**From:** Mike Manning
**Sent:** Tuesday, September 26, 2017 1:53 PM
**To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High
I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.
Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High
Hi Gadi,
I hope NYC is going well and you are finding air conditioning.
We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set

at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?

- The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
- It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:29:56 PM |

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 27, 2017 4:48 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Gadi Mayman ; Carlos Yep ; James Devine ; John Kim ; Anna Strathy
**Subject:** RE: Draft Fees Regulation

Hi Scott

As per Gadi's email yesterday, pls find below our consolidated comments. Pls feel free to contact Mike or me if you have any questions.

Base Fee:

10bps is high. We recommend a compromise of 5bps to be reviewed in a year. As background, market investment manager fees are 1-2bps for passive fixed income funds.

This is also consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. Note that the index funds require constant rebalancing by the investment manager.

OPG is receiving 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%, I.e. For each $2.5B of Global Asset X 44% equity injection would contribute, $55 million net revenue to OPG for each of the 10 years and would continue over repayment period albeit as a reduced amount as the Global Asset is paid down.

Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"

That means deleting column 1 and item 2 of the table.

Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or as a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

Thanks

Ken k

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:29:56 PM |

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 27, 2017 4:48 PM
**To:** Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi Scott

As per Gadi's email yesterday, pls find below our consolidated comments. Pls feel free to contact Mike or me if you have any questions.

Base Fee:

10bps is high. We recommend a compromise of 5bps to be reviewed in a year. As background, market investment manager fees are 1-2bps for passive fixed income funds.

This is also consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. Note that the index funds require constant rebalancing by the investment manager.

OPG is receiving 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%, I.e. For each $2.5B of Global Asset X 44% equity injection would contribute, $55 million net revenue to OPG for each of the 10 years and would continue over repayment period albeit as a reduced amount as the Global Asset is paid down.

Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"
That means deleting column 1 and item 2 of the table.

Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or as a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

Thanks

Ken k

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>  - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
>  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | James Devine; Carlos Yep |
| **Cc:** | Ken Kandeepan |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 1:53:19 PM |
| **Attachments:** | Blackline_24180663v1 - 24180663v3.pdf |
| **Importance:** | High |

---

I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.

Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

**CONFIDENTIAL**
**FOR DISCUSSION PURPOSES ONLY**

# ONTARIO REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

## FEES

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"comparison fees" means ~~typical fees~~**market comparable fees, expressed as a per annum percentage rate,** charged by ~~[service providers?~~**asset** managers~~?]~~ ~~in Ontario~~ **in Canada and any other jurisdiction as may be determined by the Board** for services that are similar to the services provided by the Financial ~~Service Manger~~**Services Manager** under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds ~~in Ontario~~,

(b) the scope of the services provided, ~~and~~

(c) the level of the services provided**, and**

**(d) the amount of assets under management**;

**"forecast interest rate" means, in respect of each tranche of funding obligations, an interest rate forecast to be applicable to such tranche of funding obligations after taking into account (i) the interest rate for debt of or guaranteed by the Province of Ontario with a corresponding term or duration, (ii) the estimated credit spread for such tranche of funding obligations with a comparable term and based on the type of instrument and risk of the issuer, and (iii) anticipated fees and commissions expected to be payable in connection with the issuance of such tranche of funding obligations.**

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year~~, other than any refinancing~~;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances**, as** at **12:00 am on** the ~~start~~**first calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities,

2

B = the sum of the balances**, as** at **11:59 pm on** the ~~end~~**last calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to **the management and administration of financing entities and the investment asset, including in relation to** funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) ~~For the purposes of subsection 19 (3) of the Act, fees may be~~**Out-of-pocket costs and expenses of the financing entities incurred by the Financial Services Manager on behalf of the financing entities and for which the Financial Services Manager is entitled to reimbursement under a** management agreement with **such financing entity shall not constitute a fee** established and charged by the Financial Services Manager ~~to financing entities for the recovery of costs and expenditures, as provided for in section 7.~~**under subsection 19(3)**

**of the Act.[1] The costs and expenditures of the financing entities referred to in this subsection (3)** may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations**;**

2. **Banking fees, including structuring fees or work fees;**

3. Fees of issuing and paying agents for funding obligations**;**

4. **Fees of trustees;**

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns**;**

6. Fees of legal counsel**;**

7. **Rating agency fees; and**

8. Filing or registration fees.

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those provided for under this ~~R~~egulation.

**Base fee, 2018 and 2019**

**3.** Subject to section 5.1, the base fee for a month in the ~~year~~**calendar years** 2018 **and 2019** shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation greater than $10 billion**

**4.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~**2019** if the average annual funding obligation for the preceding year was greater than $10 billion.

**[1] These represent third party costs and expenses of the financing entity, not part of the fees that OPG is charging the financing entity. From time to time, OPG may have to pay these upfront costs on behalf of financing entities but they will be a pass-through cost for which OPG would simply be reimbursed by the financing entity. Other than OPG's fees, the costs and expenditures of financing entities are not subject to OEB review under the Act but rather are recoverable as expenses through the CEA (and through IESO during the moratorium). Subsection (3) in this draft was added for greater certainty to ensure there was no misunderstanding.**

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation $10 billion or less**

**5.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~2019 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

4

B = the average monthly funding obligation for the preceding month.

**Board review of base fee**

**5.1** If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee. If the Board refuses to approve the proposed base fee submitted by the Financial Services Manager under section 9, the Board shall provide its reasons for such refusal and ~~may~~ make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees~~.~~ and based on the methodology used in the formulas set out in section 3, 4 and 5.

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula~~:~~ (which in respect of individual tranches may result in a negative number):

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite the circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

**Board review of variable fee** 5

**6.1** If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is ~~[unreasonable]~~**not consistent with market comparable forecast interest rates**, the Board may refuse to approve the proposed fee**. If the Board refuses to approve the proposed variable fee submitted by the** Financial Services Manager **under section 9, the Board shall provide its reasons for such refusal** and ~~may~~ make recommendations to the Financial Services Manager regarding the forecast interest rate that is ~~reasonable.~~**consistent with market comparable forecast interest rates.**

~~**Fees for costs and expenditures**~~

~~**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.~~

~~(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:~~

~~1. Underwriters or selling agents for funding obligations.~~

~~2. Banking fees.~~

3. ~~Fees of issuing and paying agents for funding obligations.~~

4. ~~Fees of trustees.~~

5. ~~Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.~~

6. ~~Fees of legal counsel.~~

7. ~~Filing or registration fees.~~

8. ~~Fees of any third party independent consultants required to be retained under the Act.~~

~~**Board review of fees for costs, expenditures**~~

~~**7.1** If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.~~

**Charging of fees**

**8.** (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee is a negative amount, it shall be deducted from the base fee payable in the following calendar year in twelve equal monthly instalments.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

**Submissions to Board re fees**

**9.** (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section ~~5.1, 6.1~~**5.1** and ~~7.1~~**6.1.**

(2) The first submission **for proposed fees to be charged for a two year period commencing in 2018** shall be made no later than [October 31, 2017].

(3) ~~The submission for each calendar year starting with 2019~~**Submissions for proposed fees to be charged for a two year period commencing in 2020 and for every two year period thereafter** shall be made no later than [120 days] before the start of the **applicable two** year **period**.

(4**) Submissions to amend the proposed fees for a month in any year following approval of the proposed fees for any two year period may be made from time to time but no more frequently than once in any 12 month period and no later than 120 days before the start of the year in which such fees are proposed to be effective.**

**(5**) If the Board makes recommendations as described in section ~~5.1, 6.1~~**5.1** or ~~7.1,~~**6.1,** the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees;

(b~~)~~ ~~a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;~~

(~~c~~) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered; **and**



(~~d~~**c**) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations~~; and~~**.**

(~~e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities]~~ **6) Until the Board has approved the fees in respect of any two year period, the fees approved for the prior two year period shall remain in effect.**

**Board approval, general**

**10.** (1) ~~The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.~~

~~[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]~~

~~(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.~~(3) For the purpose of determining whether to approve a proposed fee~~,~~ **described in section 5.1 or 6.1,**

**(a)** the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee~~.~~**; and**

(~~4) For the purpose of determining whether to approve a proposed fee,~~ **b)** the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

[OLC Note re DEFERRAL ACCOUNT:
1. You included the following instruction that would require the FSM to establish a deferral account -- what is the authority for imposing this requirement? Recall that in subs. 34 (1) of the Act, the Board is given authority to require that the FSM maintain specific accounts.

2. ENE LSB note: *Necessity of this provision to be discussion with the OEB given that fees will be recovered as a financing entity expense through the Fair Hydro program and not as part of the fees to be approved by the Board.*]

*[If needed, deferral provision could be along the following lines: The Financial Services Manager shall establish a deferral account in connection with subsection 19 (3) of the Act that records costs incurred by the Financial Services Manager in providing services referred to in section 1 during the period from July 1, 2017 to the day before the date of the Board's first order under subsection 19 (3) of the Act.]*

[OLC Note re FINANCE AMOUNT: You included the following instruction, but I think this more properly belongs somewhere in section 5 of O. Reg. 206/17? In fact, are these fees not already covered in that section (perhaps under "financing entity expenses"?). Please confirm: *Fees established by the Financial Services Manager and approved by the Board, and any applicable taxes on such fees, shall be included in the definition of "expenses" for the purposes of determining finance amounts under the Act.*]

*[Notes Re: Determining Fees:*

*(1) An alternative approach involves the Board approving the initial base fee and variable fee, with any changes to those fees being triggered by the FSM submitting to the Board proposed amendments to those fees (or the Board triggering a review on its own initiative (not more than once per year). However, because interest rates (and hence forecast interest rates) change over time (and can change even within a year), consider whether variable B of the variable fee should be approved annually. Similarly, because trends for "market comparable fees charged by service providers for similar services" change over time, consider whether variable A of the base fee should be approved annually.]*

*(2) Once every three years after the Board has approved the fees submitted by the Financial Services Manager under section 3, or more frequently if the Board requires but not more frequently than annually, the Board may require the Financial Services Manager to engage, on behalf of and at the cost of the financing entities, a third-party independent consultant to review and advise as to the appropriate benchmarks and range of values for [annual rates?] used for the purpose of determining the base fee and forecast interest rates used for the purposes of determining the variable fee and shall give due consideration to such advice.]*

**Commencement**

**x. This Regulation comes into force on the day it is filed.**

Document comparison by Workshare Compare on September-23-17 6:39:45 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/1 |
| Description | #24180663v1<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/3 |
| Description | #24180663v3<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 58 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:33:21 PM

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning
**Subject:** RE: Draft Fees Regulation

Hi Mike,
I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.
Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:33:21 PM

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi Mike,

I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.

Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.

        - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:33:09 PM

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning
**Subject:** RE: Draft Fees Regulation

Hi Mike,
I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.
Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:33:09 PM

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi Mike,

I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.

Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.

        - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:31:55 PM

---

**From:** Anna Strathy
**Sent:** Wednesday, September 27, 2017 3:47 PM
**To:** Mike Manning ; James Devine ; Ken Kandeepan ; Carlos Yep ; John Kim
**Subject:** RE: Draft Fees Regulation

Hi All,

I briefed Gadi on our call discussion this morning – he's comfortable with the proposed approach of going back at 5, with the caveats that it is at the higher end of market norms and should be evaluated by an independent expert within the first year of the program.

That said, he was also under the impression that the number/fees had already been agreed to. Had something changed between a few weeks ago and now? I'm sure Ken/Mike could clarify tomorrow – feel free to pop by his office.

Thanks, Anna

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:31:55 PM |

---

**From:** Anna Strathy
**Sent:** Wednesday, September 27, 2017 3:47 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi All,

I briefed Gadi on our call discussion this morning – he's comfortable with the proposed approach of going back at 5, with the caveats that it is at the higher end of market norms and should be evaluated by an independent expert within the first year of the program.

That said, he was also under the impression that the number/fees had already been agreed to. Had something changed between a few weeks ago and now? I'm sure Ken/Mike could clarify tomorrow – feel free to pop by his office.

Thanks, Anna

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able

to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:31:18 PM |

---

**From:** Anna Strathy
**Sent:** Wednesday, September 27, 2017 3:47 PM
**To:** Mike Manning ; James Devine ; Ken Kandeepan ; Carlos Yep ; John Kim
**Subject:** RE: Draft Fees Regulation

Hi All,
I briefed Gadi on our call discussion this morning – he's comfortable with the proposed approach of going back at 5, with the caveats that it is at the higher end of market norms and should be evaluated by an independent expert within the first year of the program.
That said, he was also under the impression that the number/fees had already been agreed to. Had something changed between a few weeks ago and now? I'm sure Ken/Mike could clarify tomorrow – feel free to pop by his office.
Thanks, Anna

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**From:** Mike Manning
**To:** Mike Manning
**Subject:** FW: Draft Fees Regulation
**Date:** Monday, October 02, 2017 8:31:18 PM

---

**From:** Anna Strathy
**Sent:** Wednesday, September 27, 2017 3:47 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi All,

I briefed Gadi on our call discussion this morning – he's comfortable with the proposed approach of going back at 5, with the caveats that it is at the higher end of market norms and should be evaluated by an independent expert within the first year of the program.

That said, he was also under the impression that the number/fees had already been agreed to. Had something changed between a few weeks ago and now? I'm sure Ken/Mike could clarify tomorrow – feel free to pop by his office.

Thanks, Anna

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able

to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Draft Fees Regulation |
| **Date:** | Monday, October 02, 2017 8:33:51 PM |
| **Attachments:** | Blackline_24180663v1 - 24180663v3.pdf |
| **Importance:** | High |

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]

**Sent:** Tuesday, September 26, 2017 12:18 PM

**To:** Gadi Mayman

**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan

**Subject:** Draft Fees Regulation

**Importance:** High

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**CONFIDENTIAL**
**FOR DISCUSSION PURPOSES ONLY**

# ONTARIO REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

## FEES

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"comparison fees" means ~~typical fees~~**market comparable fees, expressed as a per annum percentage rate,** charged by ~~[service providers?~~**asset** managers~~?]~~ ~~in Ontario~~ **in Canada and any other jurisdiction as may be determined by the Board** for services that are similar to the services provided by the Financial ~~Service Manger~~**Services Manager** under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds ~~in Ontario~~,

(b) the scope of the services provided, ~~and~~

(c) the level of the services provided**, and**

**(d) the amount of assets under management**;

**"forecast interest rate" means, in respect of each tranche of funding obligations, an interest rate forecast to be applicable to such tranche of funding obligations after taking into account (i) the interest rate for debt of or guaranteed by the Province of Ontario with a corresponding term or duration, (ii) the estimated credit spread for such tranche of funding obligations with a comparable term and based on the type of instrument and risk of the issuer, and (iii) anticipated fees and commissions expected to be payable in connection with the issuance of such tranche of funding obligations.**

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year~~, other than any refinancing~~;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances**, as** at **12:00 am on** the ~~start~~**first calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities,

2

B = the sum of the balances**, as** at **11:59 pm on** the ~~end~~**last calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to **the management and administration of financing entities and the investment asset, including in relation to** funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) ~~For the purposes of subsection 19 (3) of the Act, fees may be~~**Out-of-pocket costs and expenses of the financing entities incurred by the Financial Services Manager on behalf of the financing entities and for which the Financial Services Manager is entitled to reimbursement under a** management agreement with **such financing entity shall not constitute a fee** established and charged by the Financial Services Manager ~~to financing entities for the recovery of costs and expenditures, as provided for in section 7.~~**under subsection 19(3)**

**of the Act.[1] The costs and expenditures of the financing entities referred to in this subsection (3)** may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations**;**

2. **Banking fees, including structuring fees or work fees;**

3. Fees of issuing and paying agents for funding obligations**;**

4. **Fees of trustees;**

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns**;**

6. Fees of legal counsel**;**

7. **Rating agency fees; and**

8. Filing or registration fees.

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those provided for under this ~~R~~egulation.

**Base fee, 2018 and 2019**

**3.** Subject to section 5.1, the base fee for a month in the ~~year~~**calendar years** 2018 **and 2019** shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation greater than $10 billion**

**4.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~**2019** if the average annual funding obligation for the preceding year was greater than $10 billion.

**[1] These represent third party costs and expenses of the financing entity, not part of the fees that OPG is charging the financing entity. From time to time, OPG may have to pay these upfront costs on behalf of financing entities but they will be a pass-through cost for which OPG would simply be reimbursed by the financing entity. Other than OPG's fees, the costs and expenditures of financing entities are not subject to OEB review under the Act but rather are recoverable as expenses through the CEA (and through IESO during the moratorium). Subsection (3) in this draft was added for greater certainty to ensure there was no misunderstanding.**

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation $10 billion or less**

**5.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~2019 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

4

B = the average monthly funding obligation for the preceding month.

**Board review of base fee**

**5.1** If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee. If the Board refuses to approve the proposed base fee submitted by the Financial Services Manager under section 9, the Board shall provide its reasons for such refusal and ~~may~~ make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees~~.~~ and based on the methodology used in the formulas set out in section 3, 4 and 5.

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula~~:~~ (which in respect of individual tranches may result in a negative number):

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite the circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

**Board review of variable fee** 5

**6.1** If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is ~~[unreasonable]~~**not consistent with market comparable forecast interest rates**, the Board may refuse to approve the proposed fee**. If the Board refuses to approve the proposed variable fee submitted by the** Financial Services Manager **under section 9, the Board shall provide its reasons for such refusal** and ~~may~~ make recommendations to the Financial Services Manager regarding the forecast interest rate that is ~~reasonable.~~**consistent with market comparable forecast interest rates.**

~~**Fees for costs and expenditures**~~

~~**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.~~

~~(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:~~

~~1. Underwriters or selling agents for funding obligations.~~

~~2. Banking fees.~~

3. ~~Fees of issuing and paying agents for funding obligations.~~

4. ~~Fees of trustees.~~

5. ~~Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.~~

6. ~~Fees of legal counsel.~~

7. ~~Filing or registration fees.~~

8. ~~Fees of any third party independent consultants required to be retained under the Act.~~

~~**Board review of fees for costs, expenditures**~~

~~**7.1** If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.~~

**Charging of fees**

**8.** (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee is a negative amount, it shall be deducted from the base fee payable in the following calendar year in twelve equal monthly instalments.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

**Submissions to Board re fees**

**9.** (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section ~~5.1, 6.1~~**5.1** and ~~7.1~~**6.1.**

(2) The first submission **for proposed fees to be charged for a two year period commencing in 2018** shall be made no later than [October 31, 2017].

(3) ~~The submission for each calendar year starting with 2019~~**Submissions for proposed fees to be charged for a two year period commencing in 2020 and for every two year period thereafter** shall be made no later than [120 days] before the start of the **applicable two** year **period**.

(4**) Submissions to amend the proposed fees for a month in any year following approval of the proposed fees for any two year period may be made from time to time but no more frequently than once in any 12 month period and no later than 120 days before the start of the year in which such fees are proposed to be effective.**

**(5**) If the Board makes recommendations as described in section ~~5.1, 6.1~~**5.1** or ~~7.1,~~**6.1,** the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees;

(b~~)~~ ~~a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;~~

(~~c~~) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered; **and**



(~~d~~**c**) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations~~; and~~**.**

(~~e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities]~~ **6) Until the Board has approved the fees in respect of any two year period, the fees approved for the prior two year period shall remain in effect.**

**Board approval, general**

**10.** (1) ~~The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.~~

~~[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]~~

~~(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.~~(3) For the purpose of determining whether to approve a proposed fee~~,~~ **described in section 5.1 or 6.1,**

**(a)** the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee~~.~~**; and**

(~~4) For the purpose of determining whether to approve a proposed fee,~~ **b)** the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

[OLC Note re DEFERRAL ACCOUNT:
1. You included the following instruction that would require the FSM to establish a deferral account -- what is the authority for imposing this requirement? Recall that in subs. 34 (1) of the Act, the Board is given authority to require that the FSM maintain specific accounts.

2. ENE LSB note: *Necessity of this provision to be discussion with the OEB given that fees will be recovered as a financing entity expense through the Fair Hydro program and not as part of the fees to be approved by the Board.*]

*[If needed, deferral provision could be along the following lines: The Financial Services Manager shall establish a deferral account in connection with subsection 19 (3) of the Act that records costs incurred by the Financial Services Manager in providing services referred to in section 1 during the period from July 1, 2017 to the day before the date of the Board's first order under subsection 19 (3) of the Act.]*

[OLC Note re FINANCE AMOUNT: You included the following instruction, but I think this more properly belongs somewhere in section 5 of O. Reg. 206/17? In fact, are these fees not already covered in that section (perhaps under "financing entity expenses"?). Please confirm: *Fees established by the Financial Services Manager and approved by the Board, and any applicable taxes on such fees, shall be included in the definition of "expenses" for the purposes of determining finance amounts under the Act.*]

*[Notes Re: Determining Fees:*

*(1) An alternative approach involves the Board approving the initial base fee and variable fee, with any changes to those fees being triggered by the FSM submitting to the Board proposed amendments to those fees (or the Board triggering a review on its own initiative (not more than once per year). However, because interest rates (and hence forecast interest rates) change over time (and can change even within a year), consider whether variable B of the variable fee should be approved annually. Similarly, because trends for "market comparable fees charged by service providers for similar services" change over time, consider whether variable A of the base fee should be approved annually.]*

*(2) Once every three years after the Board has approved the fees submitted by the Financial Services Manager under section 3, or more frequently if the Board requires but not more frequently than annually, the Board may require the Financial Services Manager to engage, on behalf of and at the cost of the financing entities, a third-party independent consultant to review and advise as to the appropriate benchmarks and range of values for [annual rates?] used for the purpose of determining the base fee and forecast interest rates used for the purposes of determining the variable fee and shall give due consideration to such advice.]*

**Commencement**

**x. This Regulation comes into force on the day it is filed.**

Document comparison by Workshare Compare on September-23-17 6:39:45 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/1 |
| Description | #24180663v1<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/3 |
| Description | #24180663v3<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 58 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; LADAK Lubna -TREASURY |
| **Subject:** | FW: EXTERNAL – Fair Hydro -- Supplemental Indenture for Long Term Debt |
| **Date:** | Thursday, October 26, 2017 6:56:47 PM |
| **Attachments:** | 46490618_1.doc |

Ken:
Last document as requested has been sent to your lawyers
Please work on your lawyers to release the draft support agreement ASAP.
There is more value in releasing an earlier draft with caveats or note to draft than trying to nail everything down. That is the approach that we have impressed on Oslers and Torys in the interest of trying to move things forward.
John

**From:** Saulnier, Brett [mailto:bsaulnier@torys.com]
**Sent:** Thursday, October 26, 2017 6:36 PM
**To:** Alena.Thouin@ontario.ca; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; Tom.McKinlay@ontario.ca; STEPHEN.ASHBOURNE@blakes.com
**Cc:** WONG Leslie -LAWDIV ; LEE John -TREASURY ; RYFA Ken -TREASURY ; Feldman, Michael ; Ramchandani, Rima ; Mansoori, Nina ; Olusoga, Yinka
**Subject:** EXTERNAL – Fair Hydro -- Supplemental Indenture for Long Term Debt
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

All,
Please find attached a first draft of the supplemental indenture for the long term debt, which we just received from Osler. Osler has advised that this draft remains subject to review and comment by the dealers. Please note that Torys/OPG have not yet reviewed.
Thanks,
Brett

Brett Saulnier
P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

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

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

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE

**between**

**[ISSUER] TRUST**

**by**

**● TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**● TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2017-1)**
**OF [ISSUER] TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 SERIES 2017-1 SENIOR NOTES ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2
2.3 Delivery ..... 3
2.4 Payment of Interest ..... 3
2.5 Payment of Principal ..... 3
2.6 [Redemption and Repurchase ..... 4
2.7 Indemnification by the Issuer ..... 4
2.8 Taxes ..... 5
2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes ..... 6

ARTICLE 3 REPRESENTATIONS AND WARRANTIES ..... 6
3.1 Representations and Warranties of the Issuer ..... 6
3.2 Survival ..... 7

ARTICLE 4 GENERAL ..... 7
4.1 Acceptance of Trust ..... 7
4.2 Confirmation of Trust Indenture ..... 7
4.3 Indenture Trustee Not Bound to Act ..... 7
4.4 Successor and Assigns ..... 7
4.5 Specified Creditors ..... 8
4.6 Waiver ..... 8
4.7 Notice ..... 8
4.8 No Waiver: Remedies ..... 8
4.9 Entire Agreement ..... 8
4.10 Governing Law and Attornment ..... 8
4.11 Expenses ..... 9
4.12 Further Assurances ..... 9
4.13 Limitation of Liability of Issuer Trustee ..... 9
4.14 Execution in Counterparts ..... 10
4.15 Delivery of Executed Copies ..... 10

# ●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2007-1)

**THIS FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between ●, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and ● **Trust Company of Canada**, a trust company existing under the laws of **[Canada]** (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ● (Series 2017-1) (the "**Series 2017-1 Senior Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 SENIOR NOTES

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% Senior Notes due ● (Series 2017-1)**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be a Series of Senior Notes as contemplated by the Trust Indenture;

(c) not be divided into Tranches;

(d) be unlimited in principal amount but initially will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

(h) be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(i) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(j) bear interest at a rate of ●% per annum;

(k) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(l) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on ● and ● each year (each, an "**Interest Payment Date**") commencing ●, 2018 in

respect of the Series 2017-1 Senior Notes issued prior to such date **[NTD: Interest Payment Dates to be considered in context of model]**;

(m) **[have an initial interest payment in the amount of $● per $1,000 principal amount payable on ●, 2018;]**

(n) mature on, and have ●, as their Principal Payment Due Date;

(o) have ● as their Principal Payment Default Date;

(p) have ● as their Principal Accumulation Commencement Date;

(q) have a Record Date for each Interest Payment Date that is the ● day preceding each Interest Payment Date;

(r) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(s) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

### 2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

### 2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Senior Notes) will (i) on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date, or (ii) on the day that is two Business Days before each Interest Payment Date, forward or cause to be forwarded to the registered address of each holder of a Series 2017-1 Senior Note as of the Record Date a cheque for such interest, less any taxes required by law to be deducted or withheld, payable to the order of such holder. The payment by such wire transfer or forwarding of such cheque will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid) unless any such cheque is not paid on presentation. Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

### 2.5 Payment of Principal

**[On the] [At least one Business Day prior to the]** Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will

satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

**2.6 [Redemption and Repurchase**

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

**2.7 Indemnification by the Issuer**

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other

than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

**2.8 Taxes**

**[NTD: Subject to tax review]**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**"), excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other taxes based on or measured by the net income of any Series 2017-1 Noteholder (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**")) as a result of a present or former connection between the recipient and the jurisdiction of the governmental authority imposing such tax (other than any such connection arising solely from the recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii), any interest, penalties and additions to tax) (all such excluded taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a recipient hereunder, the amounts so payable to the recipient shall be increased, and the recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a recipient, as promptly as possible thereafter the Issuer shall send to such recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("**FATCA**") if the recipient of such payment were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with their obligations under FATCA and to determine that such recipient has complied with it's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a recipient expires or becomes obsolete or inaccurate in any respect, the recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

### 2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(f) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;

(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and

(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The Issuer and the Indenture Trustee (on behalf of the Series 2017-1 Noteholders) acknowledge and agree that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.15 (Limited Recourse) and Section 17.01 (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

● **TRUST**, by ● **TRUST COMPANY OF CANADA**, as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Code**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer;

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" is defined in Section 2.7

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%;

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" "means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | RYFA Ken -TREASURY; LADAK Lubna -TREASURY; LAURETA LAPIRA May -TREASURY; HAHN PARKER Janet -TREASURY |
| **Subject:** | FW: EXTERNAL – Fair Hydro Plan Timeline Update |
| **Date:** | Thursday, October 19, 2017 2:07:12 PM |
| **Attachments:** | OPG - Timeline - October 18, 2017.pdf |

Mike:

Further to your request, attached is the current draft schedule.

John

**From:** Stoddart, Jesse - Debt Capital Markets [mailto:Jesse.Stoddart@cibc.com]
**Sent:** Wednesday, October 18, 2017 8:16 PM
**To:** LEE John -TREASURY ; RYFA Ken -TREASURY ; LIU Sheen -TREASURY ; 'pmilligan@osler.com' ; 'rsebastiano@osler.com' ; 'rramchandani@torys.com' ; 'mfeldman@torys.com'
**Cc:** Persaud, Donnie - Debt Capital Markets ; Maciel, Andrew ; Adalja, Sunil ; Alvi, Shariq
**Subject:** EXTERNAL – Fair Hydro Plan Timeline Update
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Please see attached the most updated version of the Fair Hydro Plan master timeline. Please focus on the short term key deliverables page, and let us know if you have any comments.
Thanks,
Jesse

**Jesse Stoddart** | Analyst | Debt Capital Markets | CIBC Capital Markets | CIBC World Markets Inc.
161 Bay Street 5th Floor, Toronto ON M5J 2S8 | Tel: 416 594-7464 | Cell: 647 217-6471 | jesse.stoddart@cibc.com

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete this message including any attachments, without reading it or making a copy.

You are receiving this email because our records show that you have a relationship with one or more of the CIBC Capital Markets lines of business of Canadian Imperial Bank of Commerce (CIBC) or CIBC World Markets Inc., which includes Investment and Corporate Banking and Global Markets. If you believe you are receiving this message in error or you no longer wish to receive electronic messages from us, you may unsubscribe at any time. If you experience challenges with the unsubscribe link, reply to this email with the Subject Line "Unsubscribe" and Cc: Mailbox.CASLUnsubscribe@cibc.com. Please note that by selecting unsubscribe, we will only be able to send you emails that are required or permitted by law. Our mailing address is : CIBC CASL Unsubscribe, 161 Bay St, 9th Floor, Toronto, Ontario, M5J 2W5

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# Fair Hydro Trust Financing Program

*Master Timeline & Work Stream Schedules*

Last Updated: October 18, 2017

# Indicative Master Timeline

| | Responsibility | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Week of: | | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| **A. Administration** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Kick-off Meetings / Calls | OPG, JL, DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Initial High-Level Work Plan | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Engage Dealers' Counsel | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Prepare & Execute Dealer Engagement Letter | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **B. Legislative & Regulatory Framework** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Draft Legislation (Fair Hydro Plan Act, "FHPA") | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. First Reading of FHPA | Province | | | | | | | | | x | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Finalize FHPA (Includes Amendments to Electricity & OEB Acts) | Province | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Develop Form of Provincial Support (Term Sheet) | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Develop Regulations | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Order in Council to Approve Regulations | Province | | | | | | | | | | | | | | | | x | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Develop Fair Allocation Curve | Province | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Determine Structure of Payment of Interest and Costs during Moratorium Period | OPG, JL, DC, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. Regulations | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) OPG Fees Regulation | OPG, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) PILS Regulation | OPG, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (c) Revise GA regulation for interest flow through | OPG, JL, DC, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **C. Financing Strategy/Approach** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Review Financing Options & Determine Optimal Financing Approach | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Determine Financing Structure | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Determine the Structure of OPG's Sub Debt | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Determine Financial Model Inputs / Drivers | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Develop Trust / OPG Financing Plan | OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Develop Base Case Financial Model | OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Implement Fair Allocation Curve and Various Funding Options Into Financial Model | JL, CIBC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Prepare Base Case Output and Sensitivities for Rating Agencies | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **D. Rating Agencies** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Simplifed Rating Presentation Outlining Potential Structures | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Preliminary Discussions with Agencies (Methodology, Structures, etc.) | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Formal Rating Agency Presentation | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Rating Agencies' Undertake Their Analysis - ST Debt | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Provide Rating Confirmation (ABCP) | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |
| 6. Rating Agencies' Undertake Their Analysis - Term Debt | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Publish Credit Rating / Report | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | | | |
| **E. Key Agreements** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Trust Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Declaration of Trust | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Management Agreement / Admin Agreement | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Contribution Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Subordinated Debt Agreement ("SDA") | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Equity Subscription Agreement with the Province ("ESA") | PA, OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Key Financing Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Master Trust Indenture (Common Borrowing Platform) ("MIT") | OPG, IC, DC, JL, PA, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Master Transfer and Servicing Agreement (IESO & SPV) ("MTSA") | OPG, IC, DC, JL, PA, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (c) Change of Law Protection Agreement ("CLPA") | PA, OPG, IC, DC, JL, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **F. Risk Management** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Consider Hedging Options (Rates, Currency, etc.) | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Required Documentation (e.g. ISDA) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **G. ABCP Conduit Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Execute Engagement Letter | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Fee Letter | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Due Diligence Activities | OPG, JL, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Rating Agency Process | OPG, JL, IC, DC, RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Closing and Funding | OPG, JL, RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |
| **H. Canadian Term Debt Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Offering Memorandum | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Investor Presentation | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Engage Model Auditor / Auditor Review | OPG, JL, OPERIS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Prepare Agency Agreement | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Due Diligence Activities | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Marketing Period / Roadshow | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Price, Closing and Funding | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

NOTE: This Master Timeline is intended to be a high level summary of the various workstreams illustrated above.

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week

**Bank Holidays**

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Short Term Key Deliverables - Next Two Weeks

| | Status | Deadline | Comments | Joint Leads | | | | Counsel | | | | | | Rating | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | OPG | CIBC | GS | RBC | Torys | Oslers | Province | Blakes | IESO | Stikemans | Agencies | Operis |
| **Financial Strategy, Rating Agencies and Model Auditor** | | | | | | | | | | | | | | | |
| 1. Send legislation and regulations to Operis for review | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | ✓ |
| 2. Meeting with IESO to discuss servicing and other items | | Oct. 18 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | |
| 3. Circulate model output to OPG / deal team | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 4. Resolve issues surrounding interest payments during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| 5. Select name for Trust | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 6. Negotiate commerical terms and engage rating agencies | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | | | | | ✓ | |
| 7. OPG / dealers to provide feeback on model assumptions | | Oct. 23 | Week of Oct. 23 | ✓ | | ✓ | ✓ | | | | | | | | |
| 8. Obtain list of rating agency diligence questions for IESO | | Oct. 23 | Week of Oct. 23 | | | | | | | | | | | | |
| 9. Incorporate dealer / OPG feedback on assumptions for model | | Oct. 23 | Depending on extent of feedback | | ✓ | | | | | | | | | | |
| 10. Send model to rating agencies / Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 11. Dealers to engage agencies on ABCP conduit | | Oct. 23 | Week of Oct. 23 | | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 12. Provide supplemental indentures to rating agencies | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 13. Provide key financing docs to rating agencies | | Oct. 30 | Week of October 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 14. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| **Key Agreements and Regulations** | | | | | | | | | | | | | | | |
| 1. Send draft of declaration of trust to rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 2. Send draft of management agreement to rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 3. Oslers / dealers to provide comments on MTI | | Oct. 10 | Week of Oct. 10 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 4. Circulate first draft of supplemental indenture for ABCP | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 5. Oslers to circulate revised draft of MTSA | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 6. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | ✓ | ✓ | | | | |
| 7. Select name for Trust | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 8. Dealers to circulate revised engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Circulate draft regulations for payment of interest during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 10. Circulate first draft of supplemental indenture for term debt | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Provide comments on CLPA | | Oct. 23 | Week of Oct. 23 | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Finalize drafts of key financing documents for rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | | | | ✓ | ✓ | | | | | | |
| 13. Circulate first draft of SDA | | Oct. 30 | Week of Oct. 30 | | | | | | | ✓ | ✓ | | | | |
| 14. Finalize drafts of supplemental indentures for rating agencies | | Oct. 30 | For senior, sub debt and ABCP | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| **ABCP Conduit Execution** | | | | | | | | | | | | | | | |
| 1. Circulate first draft of supplemental indenture | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Circulate first draft of ABCP engagement letter to OPG | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 3. Finalize terms of ABCP conduit - indicative pricing and syndicate | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 4. Finalize engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 5. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 6. Finalize draft of supplemental indenture for rating agencies | | Oct. 30 | Week of Oct. 30 | | | | | | ✓ | | | | | | |
| 7. Provide draft of key financing documents to the rating agency | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 8. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| **Canadian Term Debt Execution** | | | | | | | | | | | | | | | |
| 1. Commence drafting OM | | Oct. 10 | Week of Oct. 10 | | | | | ✓ | | | | | | | |
| 2. Commence drafting supplemental indenture | | Oct. 16 | Week of Oct. 16 | | | | | | ✓ | | | | | | |
| 3. Commence drafting agency agreement | | Oct. 16 | Week of Oct. 16 | | | | | | ✓ | | | | | | |
| 4. Select issuer and indenture trustees | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 5. Commence drafting IP | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 6. Discuss potential hedging options | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 7. Circulate first draft of agency agreement | | Oct. 23 | Week of Oct. 23 | | | | | | ✓ | | | | | | |
| 8. Circulate first draft of supplemental indentures | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 9. Circulate first draft of OM | | Oct. 23 | Week of Oct. 23 | | | | | ✓ | | | | | | | |
| 10. Provide supplemental indenture to rating agencies | | Oct. 30 | | | | | ✓ | ✓ | ✓ | | | | | | |
| **Critical Path Items** | | | | | | | | | | | | | | | |
| 1. Provide trust documents to the rating agencies | | Oct. 10 | Week of Oct. 10 (Dec of Trust, Management Agreement) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | | | | | | | ✓ | ✓ | | | | |
| 3. Provide financial model to the rating agencies and Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 4. Provide drafts of key financing documents to the rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 5. Provide supplemental indenture to rating agencies | | Oct. 30 | Week of Oct. 30 (for senior, sub debt and ABCP) | | | | ✓ | ✓ | ✓ | | | | | | |
| 6. Provide revised drafts of key financing agreements to rating agencies | | Nov. 13 | Incorporating rating agency feedback feedback | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

- Complete
- In Process
- Not Started
- Bank Holiday - Shortened Week
- Primary Responsibility

# Work Stream Schedule - Financing Strategy, Rating Agencies, and Model Auditor

| Week of: | March | | | April | | | | May | | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |

## C. Financing Strategy / Approach

| | | |
|---|---|---|
| 1. | Review Financing Options & Determine Optimal Financing Approach | OPG, JL |
| 2. | Determine Financing Structure | OPG, IC, DC, JL |
| 3. | Determine the Structure of OPG's Sub Debt | OPG, IC, DC, JL |
| 4. | Determine Financial Model Inputs / Drivers | OPG, JL |
| 5. | Develop Trust / OPG Financing Plan | OPG |
| 6. | Develop Base Case Financial Model | OPG |
| 7. | Implement Fair Allocation Curve and Various Funding Options Into Financial Mode | JL, CIBC |
| 8. | Prepare Base Case Output and Sensitivities for Rating Agencies | OPG, JL |

## D. Rating Agencies

| | | |
|---|---|---|
| 1. | Prepare Simplifed Rating Presentation Outlining Potential Structures | JL |
| 2. | Preliminary Discussions with Agencies (Methodology, Structures, etc.) | JL |
| 3. | Prepare Formal Rating Agency Presentation | JL, OPG |
| 4. | Rating Agencies' Undertake Their Analysis - ST Debt | RA |
| 5. | Provide Rating Confirmation (ABCP) | RA |
| 6. | Rating Agencies' Undertake Their Analysis - Term Debt | RA |
| 7. | Publish Credit Rating / Report | RA |

## Key Items

| | | Status | Deadline | Comments | Joint Leads: OPG | Joint Leads: CIBC | Joint Leads: GS | Joint Leads: RBC | Counsel: Torys | Counsel: Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Select rating agencies | | Sept. 29 | Moving forward with DBRS and Moody's | ✓ | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 2. | Finalize fair allocation curve | | Oct. 2 | Week of Oct. 2 (delayed; expected Sept 29) | | | | | | | ✓ | | | | | |
| 3. | OPG to provide draft slides for rating presentations | | Oct. 2 | Week of Oct. 2 | ✓ | | | | | | | | | | | |
| 4. | Torys to provide legislation and contract summaries | | Oct. 3 | | | | | | ✓ | | | | | | | |
| 5. | Engage Operis | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | |
| 6. | Send legislation and regulations to Operis for review | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | |
| 7. | Finalize formal rating agency presentation | | Oct. 10 | Week of Oct. 10 | ✓ | | | ✓ | | | | | | | | |
| 8. | Provide trust documents to rating agencies | | Oct. 10 | Week of Oct. 10 (Dec of Trust, Management Agreement) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 9. | Incorporate fair allocation curve into financial model | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 10. | Circulate model output to OPG / deal team | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 11. | Resolve issues surrounding interest payments during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| 12. | Negotiate commerical terms and engage rating agencies | | Oct. 16 | Week of Oct. 16 | ✓ | | | ✓ | | | | | | | | |
| 13. | OPG / dealers to Provide feeback on model assumptions | | Oct. 23 | Week of Oct. 23 | ✓ | | ✓ | ✓ | | | | | | | | |
| 14. | Incorporate dealer / OPG feedback on assumptions for model | | Oct. 23 | Depending extent of feedback | | ✓ | | | | | | | | | | |
| 15. | Send model to rating agencies / Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 16. | Provide key financing docs to rating agencies | | Oct. 30 | Week of October 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 17. | Provide supplemental indentures to rating agencies | | Oct. 30 | Week of Oct. 30 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. | Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| 19. | Run additional sensitivities required by rating agencies | | Oct. 30 | Week of Oct. 30 | | ✓ | | | | | | | | | ✓ | |
| 20. | OPG to finalize Financing Plan | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 21. | Provide updated model to Operis | | Oct. 30 | Week of Oct. 30 | | ✓ | | | | | | | | | | |
| 22. | Delivery of first issues report by Operis | | Nov. 3 | | | | | | | | | | | | | ✓ |
| 23. | Provide draft OM to rating agencies | | Nov.6 | Week of Nov. 6 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 24. | Provide revised financing docs to rating agencies incorporating their feedback | | Nov.13 | MTI / MTSA / CLPA / supplemental indentures | ✓ | | | | ✓ | ✓ | | | | | | |
| 25. | Prepare summary of Operis audit report for OM | | Nov. 15 | | | ✓ | ✓ | ✓ | | | | | | | | ✓ |
| 26. | Delivery of second issues report by Operis | | Nov. 17 | | | | | | | | | | | | | ✓ |
| 27. | Obtain auditor reliance letter from Operis | | Nov. 20 | | | | | | | | | | | | | ✓ |
| 28. | Publish credit rating / report (senior debt and sub debt) | | Nov. 27 | Week of November 27 | | | | | | | | | | | ✓ | |
| 29. | Provide rating confirmation (ABCP) | | Dec. 11 | | | | | | | | | | | | ✓ | |

### Legend

| | |
|---|---|
| 1. OPG - Ontario Power Generation | Complete |
| 2. JL - Joint Leads | In Process |
| 3. IC - Issuers' Counsel | Not Started |
| 4. PA - Province/Counsel/Advisor | Bank Holiday - Shortened Week |
| 5. DC - Dealers' Counsel | Primary Responsibility |
| 6. RA - Rating Agencies | |
| 7. IESO - IESO/Stikeman | |
| 8. OPERIS - Operis | |

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Work Stream Schedule - Key Agreements

| Week of: | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |

### E. Key Agreements and Regulations

| | |
|---|---|
| 1. Trust Documents | |
| (a) Declaration of Trust | OPG, IC, DC, JL, PA |
| (b) Management Agreement / Admin Agreement | OPG, IC, DC, JL, PA |
| 2. Contribution Documents | |
| (a) Subordinated Debt Agreement ("SDA") | OPG, IC, DC, JL, PA |
| (b) Equity Subscription Agreement with the Province ("ESA") | PA, OPG, IC, DC, JL |
| 3. Key Financing Documents | |
| (a) Master Trust Indenture (Common Borrowing Platform) ("MIT") | OPG, IC, DC, JL, PA, IESO |
| (b) Master Transfer and Servicing Agreement (IESO & SPV) ("MTSA") | OPG, IC, DC, JL, PA, IESO |
| (c) Change of Law Protection Agreement ("CLPA") | PA, OPG, IC, DC, JL, IESO |
| 4. Regulations | |
| (a) OPG Fees Regulation | OPG, IC |
| (b) PILS Regulation | OPG, IC |
| (c) Revise GA regulation for interest flow through | OPG, JL, DC, IC |

### Key Items

| | Status | Deadline | Comments | OPG | Joint Leads: CIBC | Joint Leads: GS | Joint Leads: RBC | Counsel: Torys | Counsel: Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate revised draft of declaration of trust | | Oct. 4 | | | | | | ✓ | ✓ | | | | | | |
| 2. Circulate revised draft of management agreement | | Oct. 4 | | | | | | ✓ | ✓ | | | | | | |
| 3. Finalize draft of declaration of trust for rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 4. Finalize draft of management agreement for rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 5. Oslers / dealers to provide comments on MTI | | Oct. 10 | Week of Oct. 10 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 6. Circulate first draft of supplemental indenture for ABCP | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 7. Oslers to circulate revised draft of MTSA | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 8. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | ✓ | ✓ | | | | |
| 9. Dealers to circulate revised engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 10. Circulate draft regulations for payment of interest during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 11. Circulate first draft of supplemental indenture for term debt | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Finalize draft regulations for payment of interest through GA | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 13. Finalize PILS regulation | | Oct. 23 | Week of Oct. 23 | ✓ | | | | | ✓ | | | | | | |
| 14. Finalize OPG fees regulation | | Oct. 23 | Week of Oct. 23 | ✓ | | | | | ✓ | | | | | | |
| 15. Finalize drafts of key financing documents for rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | | | | ✓ | ✓ | | | | | | |
| 16. Circulate first draft of SDA | | Oct. 30 | Week of Oct. 30 | ✓ | | | | ✓ | | ✓ | ✓ | | | | |
| 17. Finalize drafts of supplemental indentures for rating agencies | | Oct. 30 | For senior and sub debt and ABCP | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. Finalize SDA | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 19. Finalize drafts of legal opinions | | Nov. 13 | Week of Nov. 30 | | | | | ✓ | ✓ | | | | | | |
| 20. Revise drafts of key financing documents incorporating rating agency feedback | | Nov. 13 | | ✓ | | | | ✓ | ✓ | | | | | | |
| 21. Revise drafts of supplemental indentures incorporating rating agency feedback | | Nov. 13 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week
Primary Responsibility

**Bank Holidays**

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

# Work Stream Schedule - ABCP Conduit Execution

| Week of: | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| F. ABCP Conduit Execution | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Execute Engagement Letter | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Fee Letter | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Supplemental Indenture | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Due Diligence Activities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Rating Agency Process | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Closing and Funding | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

## Key Items

| | Status | Deadline | Comments | Joint Leads: OPG | CIBC | GS | RBC | Counsel: Torys | Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate first draft of supplemental indenture | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. GS to advise of amount of participation | | Oct. 16 | | | | ✓ | | | | | | | | | |
| 3. Draft fee letter | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | | | | | | | |
| 4. Circulate first draft of ABCP engagement letter to OPG | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 5. Finalize engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 6. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 7. Finalize draft of supplemental indenture for rating agencies | | Oct. 30 | Week of Oct. 30 | | | | | | ✓ | | | | | | |
| 8. Provide draft of key financing documents to the rating agency | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| 10. Provide revised financing documents to rating agencies incorporating their feedback | | Nov. 13 | | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Finalize fee letter | | Nov. 20 | | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 12. Finalize rating agency approvals; receive confirmation ratings | | Dec. 4 | ABCP rating levels of R-1(high)/P-1 from DBRS/Moody's | | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 13. Obtain all final internal approvals | | Dec. 4 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 14. Pre-close and sign documents | | Dec. 8 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 15. Close and fund | | Dec. 11 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |

### Legend

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week
Primary Responsibility

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Work Stream Schedule - Cdn Term Debt Execution

| Week of: | March | | | April | | | | May | | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| **G. Canadian Term Debt Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Offering Memorandum (OM) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Investor Presentation (IP) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Engage Model Auditor / Auditor Review | OPG, JL, OPERIS | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | | | | | | | | | | | | |
| 5. Prepare Agency Agreement | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Due Diligence Activities | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Marketing Period / Roadshow | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Price, Closing and Funding | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

## Key Items

| | Status | Deadline | Comments | Joint Leads: OPG | CIBC | GS | RBC | Counsel: Torys | Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate first draft of supplemental indenture | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Commence drafting IP | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 3. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 4. Discuss potential hedging options | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 5. Circulate first draft of agency agreement | | Oct. 23 | Week of Oct. 23 | | | | | | ✓ | | | | | | |
| 6. Circulate first draft of OM | | Oct. 23 | Week of Oct. 23 | | | | | ✓ | | | | | | | |
| 7. Provide supplemental indenture to rating agencies | | Oct. 30 | Week of Oct. 30 | | | | ✓ | ✓ | ✓ | | | | | | |
| 8. Circulate first draft of IP | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Provide MTI and supplemental indentures to trustee | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 10. Finalize draft of supplemental indentures | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Finalize draft of agency agreement | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Provide draft OM to rating agencies | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 13. Finalize OM | | Nov. 22 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 14. Finalize IP | | Nov. 22 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 15. Send documentation to syndicate | | Nov. 23/34 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 16. Marketing period / roadshow | | Nov. 27 | Weeks of Nov. 27 and Dec. 4 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 17. Formal due diligence call | | Nov. 27 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. Release rating agency reports | | Nov. 27 | | | | | | | | | | | | ✓ | |
| 19. Syndicate to provide price indications for sub debt | | Dec. 5 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 20. Target pricing for term debt | | Dec. 7 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 21. Close transaction | | Dec. 12 | | | ✓ | ✓ | ✓ | | | | | | | | |

### Legend

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

- Complete
- In Process
- Not Started
- Bank Holiday - Shortened Week
- Primary Responsibility

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF) |
| **Cc:** | James Devine; Carlos Yep |
| **Subject:** | FW: EXTERNAL – Fair Hydro Plan Timeline Update |
| **Date:** | Thursday, October 19, 2017 2:13:44 PM |
| **Attachments:** | OPG - Timeline - October 18, 2017.pdf |

Hello everyone:
Not sure this helps too much, but passing along for your information.

Regards, Mike

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Thursday, October 19, 2017 2:07 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>
**Subject:** FW: EXTERNAL – Fair Hydro Plan Timeline Update

Mike:

Further to your request, attached is the current draft schedule.

John

---

**From:** Stoddart, Jesse - Debt Capital Markets [mailto:Jesse.Stoddart@cibc.com]
**Sent:** Wednesday, October 18, 2017 8:16 PM
**To:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; 'pmilligan@osler.com' <pmilligan@osler.com>; 'rsebastiano@osler.com' <rsebastiano@osler.com>; 'rramchandani@torys.com' <rramchandani@torys.com>; 'mfeldman@torys.com' <mfeldman@torys.com>
**Cc:** Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>
**Subject:** EXTERNAL – Fair Hydro Plan Timeline Update

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Please see attached the most updated version of the Fair Hydro Plan master timeline. Please focus on the short term key deliverables page, and let us know if you have any comments.

Thanks,
Jesse

**Jesse Stoddart** | Analyst | Debt Capital Markets | CIBC Capital Markets | CIBC World Markets Inc.
th

161 Bay Street 5 Floor, Toronto ON M5J 2S8 | Tel: 416 594-7464 | Cell: 647 217-6471 |
jesse.stoddart@cibc.com

---

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete this message including any attachments, without reading it or making a copy.

You are receiving this email because our records show that you have a relationship with one or more of the CIBC Capital Markets lines of business of Canadian Imperial Bank of Commerce (CIBC) or CIBC World Markets Inc., which includes Investment and Corporate Banking and Global Markets. If you believe you are receiving this message in error or you no longer wish to receive electronic messages from us, you may unsubscribe at any time. If you experience challenges with the unsubscribe link, reply to this email with the Subject Line "Unsubscribe" and Cc: Mailbox.CASLUnsubscribe@cibc.com. Please note that by selecting unsubscribe, we will only be able to send you emails that are required or permitted by law. Our mailing address is : CIBC CASL Unsubscribe, 161 Bay St, 9th Floor, Toronto, Ontario, M5J 2W5

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# Fair Hydro Trust Financing Program

*Master Timeline & Work Stream Schedules*

Last Updated: October 18, 2017

# Indicative Master Timeline

| | Responsibility | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Week of: | | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| **A. Administration** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Kick-off Meetings / Calls | OPG, JL, DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Initial High-Level Work Plan | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Engage Dealers' Counsel | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Prepare & Execute Dealer Engagement Letter | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **B. Legislative & Regulatory Framework** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Draft Legislation (Fair Hydro Plan Act, "FHPA") | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. First Reading of FHPA | Province | | | | | | | | | x | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Finalize FHPA (Includes Amendments to Electricity & OEB Acts) | Province | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Develop Form of Provincial Support (Term Sheet) | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Develop Regulations | PA, OPG, IESO, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Order in Council to Approve Regulations | Province | | | | | | | | | | | | | | | | x | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Develop Fair Allocation Curve | Province | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Determine Structure of Payment of Interest and Costs during Moratorium Period | OPG, JL, DC, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. Regulations | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) OPG Fees Regulation | OPG, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) PILS Regulation | OPG, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (c) Revise GA regulation for interest flow through | OPG, JL, DC, IC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **C. Financing Strategy/Approach** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Review Financing Options & Determine Optimal Financing Approach | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Determine Financing Structure | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Determine the Structure of OPG's Sub Debt | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Determine Financial Model Inputs / Drivers | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Develop Trust / OPG Financing Plan | OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Develop Base Case Financial Model | OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Implement Fair Allocation Curve and Various Funding Options Into Financial Model | JL, CIBC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Prepare Base Case Output and Sensitivities for Rating Agencies | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **D. Rating Agencies** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Simplifed Rating Presentation Outlining Potential Structures | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Preliminary Discussions with Agencies (Methodology, Structures, etc.) | JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Formal Rating Agency Presentation | JL, OPG | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Rating Agencies' Undertake Their Analysis - ST Debt | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Provide Rating Confirmation (ABCP) | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |
| 6. Rating Agencies' Undertake Their Analysis - Term Debt | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Publish Credit Rating / Report | RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | | | |
| **E. Key Agreements** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Trust Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Declaration of Trust | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Management Agreement / Admin Agreement | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Contribution Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Subordinated Debt Agreement ("SDA") | OPG, IC, DC, JL, PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Equity Subscription Agreement with the Province ("ESA") | PA, OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Key Financing Documents | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) Master Trust Indenture (Common Borrowing Platform) ("MIT") | OPG, IC, DC, JL, PA, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) Master Transfer and Servicing Agreement (IESO & SPV) ("MTSA") | OPG, IC, DC, JL, PA, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (c) Change of Law Protection Agreement ("CLPA") | PA, OPG, IC, DC, JL, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **F. Risk Management** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Consider Hedging Options (Rates, Currency, etc.) | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Required Documentation (e.g. ISDA) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **G. ABCP Conduit Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Execute Engagement Letter | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Fee Letter | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Due Diligence Activities | OPG, JL, IESO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Rating Agency Process | OPG, JL, IC, DC, RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Closing and Funding | OPG, JL, RA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |
| **H. Canadian Term Debt Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Offering Memorandum | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Investor Presentation | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Engage Model Auditor / Auditor Review | OPG, JL, OPERIS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Prepare Agency Agreement | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Due Diligence Activities | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Marketing Period / Roadshow | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Price, Closing and Funding | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

NOTE: This Master Timeline is intended to be a high level summary of the various workstreams illustrated above.

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week

**Bank Holidays**

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Short Term Key Deliverables - Next Two Weeks

| | Status | Deadline | Comments | Joint Leads | | | | Counsel | | | | | | Rating | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | OPG | CIBC | GS | RBC | Torys | Oslers | Province | Blakes | IESO | Stikemans | Agencies | Operis |
| **Financial Strategy, Rating Agencies and Model Auditor** | | | | | | | | | | | | | | | |
| 1. Send legislation and regulations to Operis for review | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | ✓ |
| 2. Meeting with IESO to discuss servicing and other items | | Oct. 18 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | |
| 3. Circulate model output to OPG / deal team | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 4. Resolve issues surrounding interest payments during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| 5. Select name for Trust | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 6. Negotiate commerical terms and engage rating agencies | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | | | | | ✓ | |
| 7. OPG / dealers to provide feeback on model assumptions | | Oct. 23 | Week of Oct. 23 | ✓ | | ✓ | ✓ | | | | | | | | |
| 8. Obtain list of rating agency diligence questions for IESO | | Oct. 23 | Week of Oct. 23 | | | | | | | | | | | | |
| 9. Incorporate dealer / OPG feedback on assumptions for model | | Oct. 23 | Depending on extent of feedback | | ✓ | | | | | | | | | | |
| 10. Send model to rating agencies / Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 11. Dealers to engage agencies on ABCP conduit | | Oct. 23 | Week of Oct. 23 | | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 12. Provide supplemental indentures to rating agencies | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 13. Provide key financing docs to rating agencies | | Oct. 30 | Week of October 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 14. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| **Key Agreements and Regulations** | | | | | | | | | | | | | | | |
| 1. Send draft of declaration of trust to rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 2. Send draft of management agreement to rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 3. Oslers / dealers to provide comments on MTI | | Oct. 10 | Week of Oct. 10 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 4. Circulate first draft of supplemental indenture for ABCP | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 5. Oslers to circulate revised draft of MTSA | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 6. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | ✓ | ✓ | | | | |
| 7. Select name for Trust | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 8. Dealers to circulate revised engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Circulate draft regulations for payment of interest during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 10. Circulate first draft of supplemental indenture for term debt | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Provide comments on CLPA | | Oct. 23 | Week of Oct. 23 | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Finalize drafts of key financing documents for rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | | | | ✓ | ✓ | | | | | | |
| 13. Circulate first draft of SDA | | Oct. 30 | Week of Oct. 30 | | | | | | | ✓ | ✓ | | | | |
| 14. Finalize drafts of supplemental indentures for rating agencies | | Oct. 30 | For senior, sub debt and ABCP | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| **ABCP Conduit Execution** | | | | | | | | | | | | | | | |
| 1. Circulate first draft of supplemental indenture | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Circulate first draft of ABCP engagement letter to OPG | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 3. Finalize terms of ABCP conduit - indicative pricing and syndicate | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 4. Finalize engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 5. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 6. Finalize draft of supplemental indenture for rating agencies | | Oct. 30 | Week of Oct. 30 | | | | | | ✓ | | | | | | |
| 7. Provide draft of key financing documents to the rating agency | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 8. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| **Canadian Term Debt Execution** | | | | | | | | | | | | | | | |
| 1. Commence drafting OM | | Oct. 10 | Week of Oct. 10 | | | | | ✓ | | | | | | | |
| 2. Commence drafting supplemental indenture | | Oct. 16 | Week of Oct. 16 | | | | | | ✓ | | | | | | |
| 3. Commence drafting agency agreement | | Oct. 16 | Week of Oct. 16 | | | | | | ✓ | | | | | | |
| 4. Select issuer and indenture trustees | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | | | | | | | |
| 5. Commence drafting IP | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 6. Discuss potential hedging options | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 7. Circulate first draft of agency agreement | | Oct. 23 | Week of Oct. 23 | | | | | | ✓ | | | | | | |
| 8. Circulate first draft of supplemental indentures | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 9. Circulate first draft of OM | | Oct. 23 | Week of Oct. 23 | | | | | ✓ | | | | | | | |
| 10. Provide supplemental indenture to rating agencies | | Oct. 30 | | | | | ✓ | ✓ | ✓ | | | | | | |
| **Critical Path Items** | | | | | | | | | | | | | | | |
| 1. Provide trust documents to the rating agencies | | Oct. 10 | Week of Oct. 10 (Dec of Trust, Management Agreement) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | | | | | | | ✓ | ✓ | | | | |
| 3. Provide financial model to the rating agencies and Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 4. Provide drafts of key financing documents to the rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 5. Provide supplemental indenture to rating agencies | | Oct. 30 | Week of Oct. 30 (for senior, sub debt and ABCP) | | | | ✓ | ✓ | ✓ | | | | | | |
| 6. Provide revised drafts of key financing agreements to rating agencies | | Nov. 13 | Incorporating rating agency feedback feedback | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

- Complete
- In Process
- Not Started
- Bank Holiday - Shortened Week
- Primary Responsibility

# Work Stream Schedule - Financing Strategy, Rating Agencies, and Model Auditor

| Week of: | March | | | April | | | | May | | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |

## C. Financing Strategy / Approach

| | | |
|---|---|---|
| 1. | Review Financing Options & Determine Optimal Financing Approach | OPG, JL |
| 2. | Determine Financing Structure | OPG, IC, DC, JL |
| 3. | Determine the Structure of OPG's Sub Debt | OPG, IC, DC, JL |
| 4. | Determine Financial Model Inputs / Drivers | OPG, JL |
| 5. | Develop Trust / OPG Financing Plan | OPG |
| 6. | Develop Base Case Financial Model | OPG |
| 7. | Implement Fair Allocation Curve and Various Funding Options Into Financial Mode | JL, CIBC |
| 8. | Prepare Base Case Output and Sensitivities for Rating Agencies | OPG, JL |

## D. Rating Agencies

| | | |
|---|---|---|
| 1. | Prepare Simplifed Rating Presentation Outlining Potential Structures | JL |
| 2. | Preliminary Discussions with Agencies (Methodology, Structures, etc.) | JL |
| 3. | Prepare Formal Rating Agency Presentation | JL, OPG |
| 4. | Rating Agencies' Undertake Their Analysis - ST Debt | RA |
| 5. | Provide Rating Confirmation (ABCP) | RA |
| 6. | Rating Agencies' Undertake Their Analysis - Term Debt | RA |
| 7. | Publish Credit Rating / Report | RA |

## Key Items

| | | Status | Deadline | Comments | Joint Leads: OPG | Joint Leads: CIBC | Joint Leads: GS | Joint Leads: RBC | Counsel: Torys | Counsel: Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Select rating agencies | | Sept. 29 | Moving forward with DBRS and Moody's | ✓ | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 2. | Finalize fair allocation curve | | Oct. 2 | Week of Oct. 2 (delayed; expected Sept 29) | | | | | | | ✓ | | | | | |
| 3. | OPG to provide draft slides for rating presentations | | Oct. 2 | Week of Oct. 2 | ✓ | | | | | | | | | | | |
| 4. | Torys to provide legislation and contract summaries | | Oct. 3 | | | | | | ✓ | | | | | | | |
| 5. | Engage Operis | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | |
| 6. | Send legislation and regulations to Operis for review | | Oct. 10 | Week of Oct. 10 | | ✓ | | | | | | | | | | |
| 7. | Finalize formal rating agency presentation | | Oct. 10 | Week of Oct. 10 | ✓ | | | ✓ | | | | | | | | |
| 8. | Provide trust documents to rating agencies | | Oct. 10 | Week of Oct. 10 (Dec of Trust, Management Agreement) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 9. | Incorporate fair allocation curve into financial model | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 10. | Circulate model output to OPG / deal team | | Oct. 16 | Week of Oct. 16 | | ✓ | | | | | | | | | | |
| 11. | Resolve issues surrounding interest payments during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| 12. | Negotiate commerical terms and engage rating agencies | | Oct. 16 | Week of Oct. 16 | ✓ | | | ✓ | | | | | | | | |
| 13. | OPG / dealers to Provide feeback on model assumptions | | Oct. 23 | Week of Oct. 23 | ✓ | | ✓ | ✓ | | | | | | | | |
| 14. | Incorporate dealer / OPG feedback on assumptions for model | | Oct. 23 | Depending extent of feedback | | ✓ | | | | | | | | | | |
| 15. | Send model to rating agencies / Operis | | Oct. 23 | Week of Oct. 23 | | ✓ | | | | | | | | | | |
| 16. | Provide key financing docs to rating agencies | | Oct. 30 | Week of October 30 (MTI / MTSA / CLPA) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 17. | Provide supplemental indentures to rating agencies | | Oct. 30 | Week of Oct. 30 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. | Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| 19. | Run additional sensitivities required by rating agencies | | Oct. 30 | Week of Oct. 30 | | ✓ | | | | | | | | | ✓ | |
| 20. | OPG to finalize Financing Plan | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 21. | Provide updated model to Operis | | Oct. 30 | Week of Oct. 30 | | ✓ | | | | | | | | | | |
| 22. | Delivery of first issues report by Operis | | Nov. 3 | | | | | | | | | | | | | ✓ |
| 23. | Provide draft OM to rating agencies | | Nov.6 | Week of Nov. 6 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 24. | Provide revised financing docs to rating agencies incorporating their feedback | | Nov.13 | MTI / MTSA / CLPA / supplemental indentures | ✓ | | | | ✓ | ✓ | | | | | | |
| 25. | Prepare summary of Operis audit report for OM | | Nov. 15 | | | ✓ | ✓ | ✓ | | | | | | | | ✓ |
| 26. | Delivery of second issues report by Operis | | Nov. 17 | | | | | | | | | | | | | ✓ |
| 27. | Obtain auditor reliance letter from Operis | | Nov. 20 | | | | | | | | | | | | | ✓ |
| 28. | Publish credit rating / report (senior debt and sub debt) | | Nov. 27 | Week of November 27 | | | | | | | | | | | ✓ | |
| 29. | Provide rating confirmation (ABCP) | | Dec. 11 | | | | | | | | | | | | ✓ | |

### Legend

| | |
|---|---|
| 1. OPG - Ontario Power Generation | Complete |
| 2. JL - Joint Leads | In Process |
| 3. IC - Issuers' Counsel | Not Started |
| 4. PA - Province/Counsel/Advisor | Bank Holiday - Shortened Week |
| 5. DC - Dealers' Counsel | Primary Responsibility |
| 6. RA - Rating Agencies | |
| 7. IESO - IESO/Stikeman | |
| 8. OPERIS - Operis | |

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Work Stream Schedule - Key Agreements

| Week of: | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |

### E. Key Agreements and Regulations

| | |
|---|---|
| 1. Trust Documents | |
| (a) Declaration of Trust | OPG, IC, DC, JL, PA |
| (b) Management Agreement / Admin Agreement | OPG, IC, DC, JL, PA |
| 2. Contribution Documents | |
| (a) Subordinated Debt Agreement ("SDA") | OPG, IC, DC, JL, PA |
| (b) Equity Subscription Agreement with the Province ("ESA") | PA, OPG, IC, DC, JL |
| 3. Key Financing Documents | |
| (a) Master Trust Indenture (Common Borrowing Platform) ("MIT") | OPG, IC, DC, JL, PA, IESO |
| (b) Master Transfer and Servicing Agreement (IESO & SPV) ("MTSA") | OPG, IC, DC, JL, PA, IESO |
| (c) Change of Law Protection Agreement ("CLPA") | PA, OPG, IC, DC, JL, IESO |
| 4. Regulations | |
| (a) OPG Fees Regulation | OPG, IC |
| (b) PILS Regulation | OPG, IC |
| (c) Revise GA regulation for interest flow through | OPG, JL, DC, IC |

### Key Items

| | Status | Deadline | Comments | OPG | Joint Leads: CIBC | Joint Leads: GS | Joint Leads: RBC | Counsel: Torys | Counsel: Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate revised draft of declaration of trust | | Oct. 4 | | | | | | ✓ | ✓ | | | | | | |
| 2. Circulate revised draft of management agreement | | Oct. 4 | | | | | | ✓ | ✓ | | | | | | |
| 3. Finalize draft of declaration of trust for rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 4. Finalize draft of management agreement for rating agencies | | Oct. 6 | | | | | | ✓ | ✓ | | | | | | |
| 5. Oslers / dealers to provide comments on MTI | | Oct. 10 | Week of Oct. 10 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 6. Circulate first draft of supplemental indenture for ABCP | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 7. Oslers to circulate revised draft of MTSA | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 8. Circulate first draft of CLPA | | Oct. 16 | Week of Oct. 16 | ✓ | | | | | | ✓ | ✓ | | | | |
| 9. Dealers to circulate revised engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 10. Circulate draft regulations for payment of interest during moratorium | | Oct. 16 | Week of Oct. 16 | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 11. Circulate first draft of supplemental indenture for term debt | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Finalize draft regulations for payment of interest through GA | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| 13. Finalize PILS regulation | | Oct. 23 | Week of Oct. 23 | ✓ | | | | | ✓ | | | | | | |
| 14. Finalize OPG fees regulation | | Oct. 23 | Week of Oct. 23 | ✓ | | | | | ✓ | | | | | | |
| 15. Finalize drafts of key financing documents for rating agencies | | Oct. 30 | Week of Oct. 30 (MTI / MTSA / CLPA) | ✓ | | | | ✓ | ✓ | | | | | | |
| 16. Circulate first draft of SDA | | Oct. 30 | Week of Oct. 30 | ✓ | | | | ✓ | | ✓ | ✓ | | | | |
| 17. Finalize drafts of supplemental indentures for rating agencies | | Oct. 30 | For senior and sub debt and ABCP | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. Finalize SDA | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 19. Finalize drafts of legal opinions | | Nov. 13 | Week of Nov. 30 | | | | | ✓ | ✓ | | | | | | |
| 20. Revise drafts of key financing documents incorporating rating agency feedback | | Nov. 13 | | ✓ | | | | ✓ | ✓ | | | | | | |
| 21. Revise drafts of supplemental indentures incorporating rating agency feedback | | Nov. 13 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |

**Legend**

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week
Primary Responsibility

**Bank Holidays**

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

# Work Stream Schedule - ABCP Conduit Execution

| Week of: | March | | | April | | | | May | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| F. ABCP Conduit Execution | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Execute Engagement Letter | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Fee Letter | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Supplemental Indenture | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Due Diligence Activities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Rating Agency Process | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Closing and Funding | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

## Key Items

| | Status | Deadline | Comments | Joint Leads: OPG | CIBC | GS | RBC | Counsel: Torys | Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate first draft of supplemental indenture | | Oct. 10 | Week of Oct. 10 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. GS to advise of amount of participation | | Oct. 16 | | | | ✓ | | | | | | | | | |
| 3. Draft fee letter | | Oct. 16 | Week of Oct. 16 | | ✓ | ✓ | ✓ | | | | | | | | |
| 4. Circulate first draft of ABCP engagement letter to OPG | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 5. Finalize engagement letter | | Oct. 16 | Week of Oct. 16 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 6. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 7. Finalize draft of supplemental indenture for rating agencies | | Oct. 30 | Week of Oct. 30 | | | | | | ✓ | | | | | | |
| 8. Provide draft of key financing documents to the rating agency | | Oct. 30 | Week of Oct. 30 | | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Rating agency due diligence with IESO | | Oct. 30 | Week of Oct. 30 (TBC) | | | | | | | | | ✓ | | ✓ | |
| 10. Provide revised financing documents to rating agencies incorporating their feedback | | Nov. 13 | | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Finalize fee letter | | Nov. 20 | | | ✓ | ✓ | ✓ | | ✓ | | | | | | |
| 12. Finalize rating agency approvals; receive confirmation ratings | | Dec. 4 | ABCP rating levels of R-1(high)/P-1 from DBRS/Moody's | | ✓ | ✓ | ✓ | | | | | | | ✓ | |
| 13. Obtain all final internal approvals | | Dec. 4 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 14. Pre-close and sign documents | | Dec. 8 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 15. Close and fund | | Dec. 11 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |

### Legend

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

Complete
In Process
Not Started
Bank Holiday - Shortened Week
Primary Responsibility

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

## Work Stream Schedule - Cdn Term Debt Execution

| Week of: | March | | | April | | | | May | | | | | June | | | | July | | | | | August | | | | September | | | | October | | | | | November | | | | December | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13 | 20 | 27 | 3 | 10 | 17 | 24 | 1 | 8 | 15 | 22 | 29 | 5 | 12 | 19 | 26 | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 | 13 | 20 | 27 | 4 | 11 | 18 | 25 |
| **G. Canadian Term Debt Execution** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. Prepare Supplemental Indenture | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. Prepare Offering Memorandum (OM) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Prepare Investor Presentation (IP) | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Engage Model Auditor / Auditor Review | OPG, JL, OPERIS | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | | | | | | | | | | | | |
| 5. Prepare Agency Agreement | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Due Diligence Activities | OPG, IC, DC, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. Marketing Period / Roadshow | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Price, Closing and Funding | OPG, JL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | x | | |

## Key Items

| | Status | Deadline | Comments | Joint Leads: OPG | CIBC | GS | RBC | Counsel: Torys | Oslers | Province | Blakes | IESO | Stikemans | Rating Agencies | Operis |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Circulate first draft of supplemental indenture | | Oct. 23 | Week of Oct. 23 (for senior and sub debt) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 2. Commence drafting IP | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 3. Select issuer and indenture trustees | | Oct. 23 | Week of Oct. 23 | ✓ | | | | ✓ | | | | | | | |
| 4. Discuss potential hedging options | | Oct. 23 | Week of Oct. 23 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 5. Circulate first draft of agency agreement | | Oct. 23 | Week of Oct. 23 | | | | | | ✓ | | | | | | |
| 6. Circulate first draft of OM | | Oct. 23 | Week of Oct. 23 | | | | | ✓ | | | | | | | |
| 7. Provide supplemental indenture to rating agencies | | Oct. 30 | Week of Oct. 30 | | | | ✓ | ✓ | ✓ | | | | | | |
| 8. Circulate first draft of IP | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 9. Provide MTI and supplemental indentures to trustee | | Oct. 30 | Week of Oct. 30 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 10. Finalize draft of supplemental indentures | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 11. Finalize draft of agency agreement | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 12. Provide draft OM to rating agencies | | Nov. 13 | Week of Nov. 13 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 13. Finalize OM | | Nov. 22 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 14. Finalize IP | | Nov. 22 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 15. Send documentation to syndicate | | Nov. 23/34 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 16. Marketing period / roadshow | | Nov. 27 | Weeks of Nov. 27 and Dec. 4 | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 17. Formal due diligence call | | Nov. 27 | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| 18. Release rating agency reports | | Nov. 27 | | | | | | | | | | | | ✓ | |
| 19. Syndicate to provide price indications for sub debt | | Dec. 5 | | | ✓ | ✓ | ✓ | | | | | | | | |
| 20. Target pricing for term debt | | Dec. 7 | | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| 21. Close transaction | | Dec. 12 | | | ✓ | ✓ | ✓ | | | | | | | | |

### Legend

1. OPG - Ontario Power Generation
2. JL - Joint Leads
3. IC - Issuers' Counsel
4. PA - Province/Counsel/Advisor
5. DC - Dealers' Counsel
6. RA - Rating Agencies
7. IESO - IESO/Stikeman
8. OPERIS - Operis

- Complete
- In Process
- Not Started
- Bank Holiday - Shortened Week
- Primary Responsibility

### Bank Holidays

**Upcoming Canadian Holidays:**

April 14 - Good Friday
May 22 - Victoria Day
July 3 - Canada Day
August 7 - Civic Holiday
October 9 - Thanksgiving
November 11 - Remembrance Day

**Upcoming U.S. Holidays:**

May 29 - Memorial Day
July 4 - Independence Day
September 4 (Canada & U.S.) - Labour Day
November 23 - Thanksgiving

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); James Devine; Carlos Yep; Mark Donaldson (MOF) |
| **Cc:** | Anna Strathy |
| **Subject:** | FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet |
| **Date:** | Thursday, September 14, 2017 10:05:05 AM |
| **Attachments:** | Province Change in Law Agreement (OPG_sCommentsSeptember13_17).docx<br>Blackline_ProvincialDraft.pdf<br>Blackline_DealerDraft.pdf |

---

## Adding Mark and Anna.

**From:** Mike Manning
**Sent:** Thursday, September 14, 2017 10:01 AM
**To:** Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF) ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Just received. This I believe incorporates E&Y comments.
Mike

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Thursday, September 14, 2017 9:56 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

---

**From:** RYFA Ken -TREASURY
**Sent:** Thursday, September 14, 2017 9:44 AM
**To:** LEE John -TREASURY <john.s.lee@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Here it is.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Wednesday, September 13, 2017 6:35 PM
**To:** 'Fullerton, Rick' <RFullerton@osler.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Smith, Elliot' <ESmith@osler.com>; 'Innes, Michael' <MInnes@osler.com>; 'Bennett, Christopher' <CBennett@osler.com>; 'King, Richard' <rking@osler.com>; 'Royer, Kate' <KRoyer@osler.com>; 'Hughes, Timothy' <THughes@osler.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; 'alan.hibben@rogers.com' <alan.hibben@rogers.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; GRECO Clara -LAWDIV <clara.greco@opg.com>; GO Matthew -TREASURY <matthew.go@opg.com>; YAO Anthea -FUNDMGMT <anthea.yao@opg.com>; JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>; PRESTON Stuart -TREASURY <stuart.preston@opg.com>; DREWNIAK John -TREASURY <john.drewniak@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>; Feldman, Michael <mfeldman@torys.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Emes, Aaron <aemes@torys.com>; Leibel, Robbie <rleibel@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Bomhof, Scott

<sbomhof@torys.com>; Slavens, Adam <aslavens@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'mfitzpatrick@hunton.com' <mfitzpatrick@hunton.com>; 'aobrian@hunton.com' <aobrian@hunton.com>; Watson, Gwen <gwatson@torys.com>

**Subject:** EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Osler team – please find attached a revised draft of the term sheet for the Provincial Change of Law Assumption Agreement (blacklined to the Province's draft as well as the draft you prepared on August 14). Please note that there are some formatting issues in the blacklines that do not appear in the clean word version.

Please also note that this draft is being concurrently circulated to OPG and remains subject to OPG's review. Please let us know if you or the dealers have any comments by no later than this Friday. We will need to circulate a revised draft of the term sheet to the Province by then.

Thank you,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

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

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

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder and made in connection thereto (the "**Regulation**").[1] This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

*This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance. |
| **Indenture Trustee:** | An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "**Master Trust Indenture**"). |
| **Beneficiaries:** | The Indenture Trustee, acting for and on behalf of the Specified Creditors. |

[1] Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.

| | |
|---|---|
| **Obligations Secured:** | Obligations Secured approved as contemplated below under Obligor Approval.[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or<br>(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.[3]<br>in each case, that is reasonably expected to adversely affect (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement or any of the agreements under which Obligations Secured arise without the agreement of the Indenture Trustee; or[4]<br>(B) a court of competent jurisdiction determines that all or a portion of the Act or the Regulation is *ultra vires*, invalid or inoperative in a way that adversely affects the ability of the Financing Entity to receive amounts on its investment |

[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.

[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.

[4] A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.

| | |
|---|---|
| | interest so that it can pay the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable. |
| **Obligation to Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |

| | |
|---|---|
| **Event of Default Cure:**[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| **Optional Assumption:** | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Obligations Secured remain outstanding. |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| **Obligor Approval:** | The Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:<br><br>In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]<br><br>It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:<br><br>(A) At least **[30 days]** prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "**Two Year Forecast**"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.<br><br>(B) the Manager shall provide the Obligor with an updated Two Year Forecast between **[6 and 9 months]** prior to the expiry of each current Two Year Forecast.<br><br>(C) Unless the Obligor provides the Manager with a written notice no later than **[3 months]** prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all |

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

[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder* ***and made in connection thereto*** *(the "**Regulation**").*[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act* ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable****. The provincial* ~~*protection and assurance*~~***assumption*** *arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the ~~Beneficiaries~~**Specified Creditors** in accordance with ~~a~~**the Master** Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance ~~acting together~~. |
| **Indenture Trustee:** | An indenture trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under an applicable~~**the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture")**. |
| **Beneficiaries:** | The Indenture Trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under~~**the** Specified ~~Claims~~**Creditors**. |
| ~~**Specified Claims**~~**Obligations Secured:** | ~~Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are~~**Obligations Secured** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | approved as contemplated below under Obligor Approval.<br>~~Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].~~[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(B) (2) the Legislature enacts or amends any other statute;<br>(C) (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) **or amends** the ~~General~~ Regulation made under the Act or any portion thereof; ~~or~~<br>(D) (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*)~~,~~**; or**<br>(E) **(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]<br>(F) in each case, that ~~materially and~~**is reasonably expected to** adversely ~~affects~~**affect** (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

**[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

| | |
|---|---|
| | pay ~~Specified Claims~~**the Obligations Secured** or (b) the Change of Law Assumption Agreement or any of the agreements under which ~~Specified Claims~~**Obligations Secured** arise without the agreement of the Indenture Trustee; or[4]<br><br>(G) a court of competent jurisdiction ~~in a final and non-appealable judgement~~ determines that all or a portion of the Act or the Regulation is *ultra vires*~~,~~ **invalid or inoperative** in a way that ~~materially and~~ adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay ~~Specified Claims~~**the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable**. |
| **Obligation to ~~Assume Specified Claims~~Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, ~~the Indenture Trustee will have the right to require~~ the Obligor ~~to~~**will** pay the ~~amount of Specified Claims~~**amounts pertaining to the Obligations Secured** on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the **Master** Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages~~, or for economic loss or loss of profits~~. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of ~~a Specified Claim~~**an Obligation Secured**, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the ~~Specified Claim~~**Obligations Secured**, including the security interest in ~~each related investment interest and related~~**the** property of the Financing Entity~~ and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent~~. |
| **Event of Default Cure:**[5] | **Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the** |

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

[5] **We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.**

| | |
|---|---|
| | **Obligor would have the following rights:**<br>**(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;**<br>**(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and**<br>**(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.**<br>**(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor.** |
| **Optional ~~Replacement~~Assumption:** | At any time following ~~the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable~~**an Assumption Event or an Event of Default**, the Obligor shall be entitled (but not obligated) to ~~replace the Financing Entity as obligor and debtor and directly~~ assume all of the ~~Financing Entity's outstanding obligations and liabilities~~**Obligations Secured**. The Financing Entity (including through the ~~Financial Services~~ Manager) will ensure that any ~~obligation and liabilities undertaken or assumed by it will~~**Obligations Secured** by their **contractual** terms permit ~~such a replacement and assumption (or, if applicable, satisfaction and termination)~~**, on an Assumption Event or an Event of Default, an assumption** by the Obligor ~~without additional cost or penalty and~~ without any requirement for further consent, approval or |

| | |
|---|---|
| | agreement **of the applicable Specified Creditor**. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any ~~Specified Claim remains~~**Obligations Secured remain** outstanding. |
| **Obligor Approval:** | The<~~ *Change of Law Assumption Agreement* >~~will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the~~ Change of Law Assumption Agreement will apply to ~~Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~**all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the**> *Change of Law Assumption Agreement* <**in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br>**(C)** ~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ **Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on September-13-17 6:21:56 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/1 |
| Description | #24124144v1<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 67 |
| Deletions | 46 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 115 |

~~**Provincial Protection and Assurances**~~

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This* ***indicative*** *term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017* ***(the "Act")*** *and the regulations* ~~*to be*~~ *made thereunder* ***and made in connection thereto*** *(the "*~~***Act***~~***Regulation***").[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act*~~.~~ ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.***

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change ~~in~~of Law ~~Guarantee~~Assumption Agreement:** | **A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture.** |
| **~~Guarantor~~Obligor:** | The Province of Ontario**, by the Minister of Energy and the Minister of Finance.** |
| **Indenture Trustee:** | **An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture").** |
| **Beneficiaries:** | **The Indenture Trustee, acting for and on behalf of the Specified Creditors.** |
| **Obligations Secured:** | **Obligations Secured approved as contemplated below under** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | **Obligor Approval.**[2] |
| ~~**Guarantee Activation**~~**Assumption Events:** | Any of the following would constitute ~~a Guarantee Activation~~an Assumption Event:<br>(A) ~~the Legislative Assembly of Ontario repealing (and not replacing~~**(1) the Legislature repeals (and does not replace** on an equivalent basis) **or amends** the Act or any ~~Regulation made thereunder;~~ **portion thereof;**<br>(B) ~~(B) the Legislative Assembly of Ontario causing to come into force any~~ **(2) the Legislature enacts or amends any other** statute**;** ~~(including any amendment to the Act or a Regulation made thereunder), or causing to come into force or making any order-in-council or regulation, or causing to come into force any other discriminatory action (including by way of any order by the Ontario Energy Board), in any case, in a way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~<br>(C) **(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;**<br>(D) **(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or**<br>(E) **(5)** >*there is a change in the organization, structure*<> *or operations* <**of the** |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

>*IESO or a change in the electricity market structure or operations* <**not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]

(F) **in each case,** that is reasonably expected to ~~limit~~**adversely affect (a)** the ability of the Financing Entity to receive amounts on its investment interest ~~such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected;~~

(G) ~~(C) the Legislative Assembly of Ontario directly or indirectly amending the Guarantee~~**so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement** or any of the ~~financing transaction~~ agreements **under which Obligations Secured arise** without the agreement of the ~~Financing Entity;~~**Indenture Trustee; or**[4]

**(H)** ~~(D)~~ a court of competent jurisdiction ~~(i) declares any funding obligations of the Financing Entity to be~~<~~*invalid or unenforceable*~~> ~~or (ii) in a final and non-appealable judgement~~ determines that all or a portion of the Act **or the Regulation** is *ultra vires*, **invalid or inoperative** in a way that adversely affects the ~~rights and interests of the Financing Entity, including, for greater certainty, in any manner that is reasonably expected to limit the~~ ability of the Financing Entity to receive amounts on its investment interest ~~such~~**so** that it can pay ~~its specified creditors, including making payments on its~~**the Obligations Secured including, without limitation, a declaration that any** funding obligations ~~on the same basis as before such judgement; or~~

**(I)** ~~(E)~~ <~~*there is a change in the organization, structure*~~> <~~*or operations*~~>of the <~~*IESO or a change in the electricity market structure or operations*~~>~~in any way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~

[3] **We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

| | |
|---|---|
| | ~~that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected~~ **~~[NTD: Alternatively, with respect to the IESO servicing obligations, include the Servicing Guarantee language with respect to the IESO that was included in the last mark-up of the term sheet received from the Province.]~~**Financing Entity or any investment interests are> *invalid or unenforceable*<. |
| ~~Guarantee~~Obligation to Pay the Obligations Secured: | Upon the occurrence of ~~a Guarantee Activation Event, the Guarantor shall immediately assume and pay when~~an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration)~~ all of the obligations of the Financing Entity. The obligations of the Financing Entity include its funding obligations as well as any other obligation the Financing Entity has related to the Fair Hydro program such as payments to service providers (such as trustees, auditors, etc), rating agencies and any fees due to the securities commissions~~. The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| Subrogation: | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |
| Event of Default Cure:[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| | notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| Optional Assumption: | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The ~~Guarantee~~Change of Law Assumption Agreement will continue for as long as ~~the Financing Entity has~~ any Obligations Secured remain outstanding~~ financing or other contractual obligations and until such obligations have all been paid in full or otherwise satisfied~~. |
| Obligor **Approval**~~-~~ | The ~~guarantee agreement containing the terms and conditions contemplated by this term sheet shall be entered into prior to the~~ |

| | |
|---|---|
| ~~**Requirement**~~**:** | ~~Financing Entity incurring its first funding obligation. The Province shall enter into the guarantee based on forms of program and series financing documents required for each financing transaction (e.g., form of supplemental indenture). As long as the financing transaction documents are generally consistent with the agreed upon form, the Province's specific approval for specific funding obligations incurred by the Financing Entity will not be required. Subsequent approval is only needed if the form of such documents are materially changed. For greater certainty, deal specific terms (such as tenor, pricing, etc) shall not be considered a change in the form of transaction and series documents~~**Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br><br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br><br>**(C) Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The ~~parties~~**Change of Law Assumption Agreement** will acknowledge that the ~~Guarantor~~**Obligor** will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the ~~Guarantor~~**Obligor**, or any agent or representative of the ~~Guarantor~~**Obligor** in connection with the ~~Guarantee~~**Change of Law Assumption Agreement,** may be subject to disclosure in accordance with the act or as otherwise required by law**.** |
| **Representations and Warranties:** | To be determined ~~based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Guarantor and~~**by the Minister of Finance and Minister of Energy in negotiation with** the Financing Entity**.** |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the ~~Guarantor~~**Obligor** and the Financing Entity**.** |
| **Governing Law:** | Province of Ontario**.** |

~~**Warehousing Takeout Risk and Servicing (Commingling) Risk**~~

~~*Note – these items are provided for information purposes only as these risks were included in the previous version of the term sheet as items that the Dealers/OPG were looking for the Province for protection against. The current proposals with respect to these items is described below. These do not contain any requirement for the Province to directly backstop these risks.*~~

| | |
|---|---|
| **Commingling Risk (applies to Warehouse as well as any Term transactions)** | |
| **Commingling Risk Mitigant:** | For any LDC which is not investment grade rated by each of the rating agencies which are rating the funding obligations (the "Non-Investment Grade LDCs"), either:<br>(A) The IESO must post a Letter of Credit (L/C), or deposit funds in a Commingling Reserve Account in a quantum equal to the Commingling Risk Amount; or<br>(B) The IESO, for so long as it is rated investment grade by the rating agencies which are rating the funding obligations, will assume responsibility for commingling risk by the LDCs and will agree to remit to the Financing Entity any clean energy adjustment amounts collected by the LDC, regardless of whether the LDC remitted those amounts to the IESO for remittance to the Financing Entity |
| **Commingling Risk Amount:** | An amount equal to the sum of the expected Clean Energy Adjustment collections from the Non-Investment Grade LDCs over the next [45-60] days |
| **Commingling Risk Amount Reset Date:** | Each settlement date for the Financing Entity (monthly) |
| **Beneficiary:** | The beneficiary of the L/C or the Commingling Reserve Account would be the Financing Entity and the Indenture Trustee for the benefit of the creditors of the Financing Entity. The Financing Entity and/or the Indenture Trustee would have the ability to draw down the L/C or draw on the Commingling Reserve Account for any clean energy adjustment amounts expected to be received from the IESO but which were not received due to those funds not being remitted from an LDC to the IESO for that period |
| **L/C Provider:** | An entity rated at least A+ (or equivalent) |
| **Approvals:** | The approach is subject to approval from the IESO, by the rating agencies rating the funding obligations of the Financing Entity and the risk management areas of the banks providing the warehouse facilities |
| | |
| **Warehouse Takeout Risk** | |
| **Commitment Period for** | |

| | |
|---|---|
| **Warehouse[1]:** | Expected to be 12-24 months |
| **Takeout for Warehouse:** | Expected to be every 3-6 months |
| **Warehouse Default Event:** | One of the events of default for the warehouse will be the failure to repay the warehouse facility at the end of the commitment term |
| **Consequences of Warehouse Default Event:** | If the Warehouse Default Event[2] described above occurs, all amounts funded through the warehouse would become immediately due and payable, subject to the Warehouse Default Payment Cap, and Default Pricing will be charged on any amounts funded through the warehouse facility |
| **Default Pricing:** | Step up in pricing to [x] until the moratorium period ends and thereafter stepping up in increments of [y] every six months until the warehouse facility is repaid |
| **Warehouse Default Payment Cap:** | For any given reference period following the occurrence of a Warehouse Default Event, the amount that shall be remitted to the Financing Entity for repayment of the warehouse facilities will be the sum of (x) the interest amount due on the warehouse facilities (which, for greater certainty will include any program fees) and (y) the lessor of:<br>(a) The outstanding amount funded through the warehouse facilities; and<br>(b) The maximum amount that can be charged for that period so that clean energy adjustments are equal to, but do not exceed, the fair allocation amount for such period. |
| **Approval Requirement:** | Subject to approval by the risk management areas of the banks providing the warehouse facilities which will in part depend on receipt of information on the fair allocation curve and an understanding of how long the "tail risk" could be following a Warehouse Default Event |

[1] Please note that this is not intended to be an exhaustive list of terms for the warehouse facility, but rather is a summary of a few select terms that relate to the warehouse takeout risk.

[2] Note there may be other Warehouse Default Events beyond the takeout risk item described above. The consequences for a breach of these other Warehouse Default Events may be different than the one described above where the default is related to failure to takeout the warehouse facility by the end of the commitment period.

| | |
|---|---|
| | |
| | |
| | |

Document comparison by Workshare Compare on September-13-17 6:22:51 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24127131/1 |
| Description | #24127131v1<TorysAtWork> - ignore |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 93 |
| Deletions | 91 |
| Moved from | 4 |
| Moved to | 4 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 192 |

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); James Devine; Carlos Yep |
| **Subject:** | FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet |
| **Date:** | Thursday, September 14, 2017 10:01:17 AM |
| **Attachments:** | Province Change in Law Agreement (OPG_sCommentsSeptember13_17).docx<br>Blackline_ProvincialDraft.pdf<br>Blackline_DealerDraft.pdf |

Just received. This I believe incorporates E&Y comments.
Mike

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Thursday, September 14, 2017 9:56 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

**From:** RYFA Ken -TREASURY
**Sent:** Thursday, September 14, 2017 9:44 AM
**To:** LEE John -TREASURY <john.s.lee@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Here it is.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Wednesday, September 13, 2017 6:35 PM
**To:** 'Fullerton, Rick' <RFullerton@osler.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Smith, Elliot' <ESmith@osler.com>; 'Innes, Michael' <MInnes@osler.com>; 'Bennett, Christopher' <CBennett@osler.com>; 'King, Richard' <rking@osler.com>; 'Royer, Kate' <KRoyer@osler.com>; 'Hughes, Timothy' <THughes@osler.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; 'alan.hibben@rogers.com' <alan.hibben@rogers.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; GRECO Clara -LAWDIV <clara.greco@opg.com>; GO Matthew -TREASURY <matthew.go@opg.com>; YAO Anthea -FUNDMGMT <anthea.yao@opg.com>; JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>; PRESTON Stuart -TREASURY <stuart.preston@opg.com>; DREWNIAK John -TREASURY <john.drewniak@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>; Feldman, Michael <mfeldman@torys.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Emes, Aaron <aemes@torys.com>; Leibel, Robbie <rleibel@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Slavens, Adam <aslavens@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'mfitzpatrick@hunton.com'

<mfitzpatrick@hunton.com>; 'aobrian@hunton.com' <aobrian@hunton.com>; Watson, Gwen <gwatson@torys.com>

**Subject:** EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Osler team – please find attached a revised draft of the term sheet for the Provincial Change of Law Assumption Agreement (blacklined to the Province's draft as well as the draft you prepared on August 14). Please note that there are some formatting issues in the blacklines that do not appear in the clean word version.

Please also note that this draft is being concurrently circulated to OPG and remains subject to OPG's review. Please let us know if you or the dealers have any comments by no later than this Friday. We will need to circulate a revised draft of the term sheet to the Province by then.

Thank you,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

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

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

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder and made in connection thereto (the "**Regulation**").[1] This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

*This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance. |
| **Indenture Trustee:** | An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "**Master Trust Indenture**"). |
| **Beneficiaries:** | The Indenture Trustee, acting for and on behalf of the Specified Creditors. |

[1] Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.

| | |
|---|---|
| **Obligations Secured:** | Obligations Secured approved as contemplated below under Obligor Approval.[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or<br>(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.[3]<br>in each case, that is reasonably expected to adversely affect (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement or any of the agreements under which Obligations Secured arise without the agreement of the Indenture Trustee; or[4]<br>(B) a court of competent jurisdiction determines that all or a portion of the Act or the Regulation is *ultra vires*, invalid or inoperative in a way that adversely affects the ability of the Financing Entity to receive amounts on its investment |

[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.

[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.

[4] A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.

| | |
|---|---|
| | interest so that it can pay the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable. |
| **Obligation to Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |

| | |
|---|---|
| **Event of Default Cure:**[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| **Optional Assumption:** | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Obligations Secured remain outstanding. |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| **Obligor Approval:** | The Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:<br><br>In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]<br><br>It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:<br><br>(A) At least **[30 days]** prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "**Two Year Forecast**"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.<br><br>(B) the Manager shall provide the Obligor with an updated Two Year Forecast between **[6 and 9 months]** prior to the expiry of each current Two Year Forecast.<br><br>(C) Unless the Obligor provides the Manager with a written notice no later than **[3 months]** prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all |

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

[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder* ***and made in connection thereto*** *(the "**Regulation**").*[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act* ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable****. The provincial* ~~*protection and assurance*~~***assumption*** *arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the ~~Beneficiaries~~**Specified Creditors** in accordance with ~~a~~**the Master** Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance ~~acting together~~. |
| **Indenture Trustee:** | An indenture trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under an applicable~~**the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture")**. |
| **Beneficiaries:** | The Indenture Trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under~~**the** Specified ~~Claims~~**Creditors**. |
| ~~**Specified Claims**~~**Obligations Secured:** | ~~Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are~~**Obligations Secured** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | approved as contemplated below under Obligor Approval.<br>~~Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].~~[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(B) (2) the Legislature enacts or amends any other statute;<br>(C) (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) **or amends** the ~~General~~ Regulation made under the Act or any portion thereof; ~~or~~<br>(D) (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*)~~,~~**; or**<br>(E) **(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]<br>(F) in each case, that ~~materially and~~**is reasonably expected to** adversely ~~affects~~**affect** (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

**[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

| | |
|---|---|
| | pay ~~Specified Claims~~**the Obligations Secured** or (b) the Change of Law Assumption Agreement or any of the agreements under which ~~Specified Claims~~**Obligations Secured** arise without the agreement of the Indenture Trustee; or[4]<br><br>(G) a court of competent jurisdiction ~~in a final and non-appealable judgement~~ determines that all or a portion of the Act or the Regulation is *ultra vires*~~,~~ **invalid or inoperative** in a way that ~~materially and~~ adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay ~~Specified Claims~~**the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable**. |
| **Obligation to ~~Assume Specified Claims~~Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, ~~the Indenture Trustee will have the right to require~~ the Obligor ~~to~~**will** pay the ~~amount of Specified Claims~~**amounts pertaining to the Obligations Secured** on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the **Master** Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages~~, or for economic loss or loss of profits~~. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of ~~a Specified Claim~~**an Obligation Secured**, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the ~~Specified Claim~~**Obligations Secured**, including the security interest in ~~each related investment interest and related~~**the** property of the Financing Entity~~ and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent~~. |
| **Event of Default Cure:**[5] | **Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the** |

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

[5] **We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.**

| | |
|---|---|
| | **Obligor would have the following rights:**<br>**(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;**<br>**(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and**<br>**(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.**<br>**(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor.** |
| **Optional ~~Replacement~~Assumption:** | At any time following ~~the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable~~**an Assumption Event or an Event of Default**, the Obligor shall be entitled (but not obligated) to ~~replace the Financing Entity as obligor and debtor and directly~~ assume all of the ~~Financing Entity's outstanding obligations and liabilities~~**Obligations Secured**. The Financing Entity (including through the ~~Financial Services~~ Manager) will ensure that any ~~obligation and liabilities undertaken or assumed by it will~~**Obligations Secured** by their **contractual** terms permit ~~such a replacement and assumption (or, if applicable, satisfaction and termination)~~**, on an Assumption Event or an Event of Default, an assumption** by the Obligor ~~without additional cost or penalty and~~ without any requirement for further consent, approval or |

| | |
|---|---|
| | agreement **of the applicable Specified Creditor**. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any ~~Specified Claim remains~~**Obligations Secured remain** outstanding. |
| **Obligor Approval:** | The<~~ *Change of Law Assumption Agreement* >~~will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the~~ Change of Law Assumption Agreement will apply to ~~Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~**all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the**> *Change of Law Assumption Agreement* <**in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br>**(C)** ~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ **Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on September-13-17 6:21:56 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/1 |
| Description | #24124144v1<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 67 |
| Deletions | 46 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 115 |

~~**Provincial Protection and Assurances**~~

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This* ***indicative*** *term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017* ***(the "Act")*** *and the regulations* ~~*to be*~~ *made thereunder* ***and made in connection thereto*** *(the "*~~***Act***~~***Regulation***").[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act*~~.~~ ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.***

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change ~~in~~of Law ~~Guarantee~~Assumption Agreement:** | **A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture.** |
| **~~Guarantor~~Obligor:** | The Province of Ontario**, by the Minister of Energy and the Minister of Finance.** |
| **Indenture Trustee:** | **An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture").** |
| **Beneficiaries:** | **The Indenture Trustee, acting for and on behalf of the Specified Creditors.** |
| **Obligations Secured:** | **Obligations Secured approved as contemplated below under** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | **Obligor Approval.**[2] |
| ~~**Guarantee Activation**~~**Assumption Events:** | Any of the following would constitute ~~a Guarantee Activation~~an Assumption Event:<br>(A) ~~the Legislative Assembly of Ontario repealing (and not replacing~~**(1) the Legislature repeals (and does not replace** on an equivalent basis) **or amends** the Act or any ~~Regulation made thereunder;~~ **portion thereof;**<br>(B) ~~(B) the Legislative Assembly of Ontario causing to come into force any~~ **(2) the Legislature enacts or amends any other** statute**;** ~~(including any amendment to the Act or a Regulation made thereunder), or causing to come into force or making any order-in-council or regulation, or causing to come into force any other discriminatory action (including by way of any order by the Ontario Energy Board), in any case, in a way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~<br>(C) **(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;**<br>(D) **(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or**<br>(E) **(5)** >*there is a change in the organization, structure*<> *or operations* <**of the** |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

>*IESO or a change in the electricity market structure or operations* <**not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]

(F) **in each case,** that is reasonably expected to ~~limit~~**adversely affect (a)** the ability of the Financing Entity to receive amounts on its investment interest ~~such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected;~~

(G) ~~(C) the Legislative Assembly of Ontario directly or indirectly amending the Guarantee~~**so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement** or any of the ~~financing transaction~~ agreements **under which Obligations Secured arise** without the agreement of the ~~Financing Entity;~~**Indenture Trustee; or**[4]

**(H)** ~~(D)~~ a court of competent jurisdiction ~~(i) declares any funding obligations of the Financing Entity to be~~<~~*invalid or unenforceable*~~> ~~or (ii) in a final and non-appealable judgement~~ determines that all or a portion of the Act **or the Regulation** is *ultra vires*, **invalid or inoperative** in a way that adversely affects the ~~rights and interests of the Financing Entity, including, for greater certainty, in any manner that is reasonably expected to limit the~~ ability of the Financing Entity to receive amounts on its investment interest ~~such~~**so** that it can pay ~~its specified creditors, including making payments on its~~**the Obligations Secured including, without limitation, a declaration that any** funding obligations ~~on the same basis as before such judgement; or~~

**(I)** ~~(E)~~ <~~*there is a change in the organization, structure*~~> <~~*or operations*~~>of the <~~*IESO or a change in the electricity market structure or operations*~~>~~in any way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~

[3] **We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

| | |
|---|---|
| | ~~that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected~~ **~~[NTD: Alternatively, with respect to the IESO servicing obligations, include the Servicing Guarantee language with respect to the IESO that was included in the last mark-up of the term sheet received from the Province.]~~**Financing Entity or any investment interests are> *invalid or unenforceable*<. |
| ~~Guarantee~~Obligation to Pay the Obligations Secured: | Upon the occurrence of ~~a Guarantee Activation Event, the Guarantor shall immediately assume and pay when~~an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration)~~ all of the obligations of the Financing Entity. The obligations of the Financing Entity include its funding obligations as well as any other obligation the Financing Entity has related to the Fair Hydro program such as payments to service providers (such as trustees, auditors, etc), rating agencies and any fees due to the securities commissions~~. The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| Subrogation: | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |
| Event of Default Cure:[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| | notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| Optional Assumption: | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The ~~Guarantee~~Change of Law Assumption Agreement will continue for as long as ~~the Financing Entity has~~ any Obligations Secured remain outstanding~~ financing or other contractual obligations and until such obligations have all been paid in full or otherwise satisfied~~. |
| Obligor **Approval**~~-~~ | The ~~guarantee agreement containing the terms and conditions contemplated by this term sheet shall be entered into prior to the~~ |

| | |
|---|---|
| ~~**Requirement**~~**:** | ~~Financing Entity incurring its first funding obligation. The Province shall enter into the guarantee based on forms of program and series financing documents required for each financing transaction (e.g., form of supplemental indenture). As long as the financing transaction documents are generally consistent with the agreed upon form, the Province's specific approval for specific funding obligations incurred by the Financing Entity will not be required. Subsequent approval is only needed if the form of such documents are materially changed. For greater certainty, deal specific terms (such as tenor, pricing, etc) shall not be considered a change in the form of transaction and series documents~~**Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br><br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br><br>**(C) Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The ~~parties~~**Change of Law Assumption Agreement** will acknowledge that the ~~Guarantor~~**Obligor** will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the ~~Guarantor~~**Obligor**, or any agent or representative of the ~~Guarantor~~**Obligor** in connection with the ~~Guarantee~~**Change of Law Assumption Agreement,** may be subject to disclosure in accordance with the act or as otherwise required by law**.** |
| **Representations and Warranties:** | To be determined ~~based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Guarantor and~~**by the Minister of Finance and Minister of Energy in negotiation with** the Financing Entity**.** |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the ~~Guarantor~~**Obligor** and the Financing Entity**.** |
| **Governing Law:** | Province of Ontario**.** |

~~**Warehousing Takeout Risk and Servicing (Commingling) Risk**~~

~~*Note – these items are provided for information purposes only as these risks were included in the previous version of the term sheet as items that the Dealers/OPG were looking for the Province for protection against. The current proposals with respect to these items is described below. These do not contain any requirement for the Province to directly backstop these risks.*~~

| | |
|---|---|
| **Commingling Risk (applies to Warehouse as well as any Term transactions)** | |
| **Commingling Risk Mitigant:** | For any LDC which is not investment grade rated by each of the rating agencies which are rating the funding obligations (the "Non-Investment Grade LDCs"), either:<br>(A) The IESO must post a Letter of Credit (L/C), or deposit funds in a Commingling Reserve Account in a quantum equal to the Commingling Risk Amount; or<br>(B) The IESO, for so long as it is rated investment grade by the rating agencies which are rating the funding obligations, will assume responsibility for commingling risk by the LDCs and will agree to remit to the Financing Entity any clean energy adjustment amounts collected by the LDC, regardless of whether the LDC remitted those amounts to the IESO for remittance to the Financing Entity |
| **Commingling Risk Amount:** | An amount equal to the sum of the expected Clean Energy Adjustment collections from the Non-Investment Grade LDCs over the next [45-60] days |
| **Commingling Risk Amount Reset Date:** | Each settlement date for the Financing Entity (monthly) |
| **Beneficiary:** | The beneficiary of the L/C or the Commingling Reserve Account would be the Financing Entity and the Indenture Trustee for the benefit of the creditors of the Financing Entity. The Financing Entity and/or the Indenture Trustee would have the ability to draw down the L/C or draw on the Commingling Reserve Account for any clean energy adjustment amounts expected to be received from the IESO but which were not received due to those funds not being remitted from an LDC to the IESO for that period |
| **L/C Provider:** | An entity rated at least A+ (or equivalent) |
| **Approvals:** | The approach is subject to approval from the IESO, by the rating agencies rating the funding obligations of the Financing Entity and the risk management areas of the banks providing the warehouse facilities |
| | |
| **Warehouse Takeout Risk** | |
| **Commitment Period for** | |

| | |
|---|---|
| **Warehouse[1]:** | Expected to be 12-24 months |
| **Takeout for Warehouse:** | Expected to be every 3-6 months |
| **Warehouse Default Event:** | One of the events of default for the warehouse will be the failure to repay the warehouse facility at the end of the commitment term |
| **Consequences of Warehouse Default Event:** | If the Warehouse Default Event[2] described above occurs, all amounts funded through the warehouse would become immediately due and payable, subject to the Warehouse Default Payment Cap, and Default Pricing will be charged on any amounts funded through the warehouse facility |
| **Default Pricing:** | Step up in pricing to [x] until the moratorium period ends and thereafter stepping up in increments of [y] every six months until the warehouse facility is repaid |
| **Warehouse Default Payment Cap:** | For any given reference period following the occurrence of a Warehouse Default Event, the amount that shall be remitted to the Financing Entity for repayment of the warehouse facilities will be the sum of (x) the interest amount due on the warehouse facilities (which, for greater certainty will include any program fees) and (y) the lessor of:<br>(a) The outstanding amount funded through the warehouse facilities; and<br>(b) The maximum amount that can be charged for that period so that clean energy adjustments are equal to, but do not exceed, the fair allocation amount for such period. |
| **Approval Requirement:** | Subject to approval by the risk management areas of the banks providing the warehouse facilities which will in part depend on receipt of information on the fair allocation curve and an understanding of how long the "tail risk" could be following a Warehouse Default Event |

[1] Please note that this is not intended to be an exhaustive list of terms for the warehouse facility, but rather is a summary of a few select terms that relate to the warehouse takeout risk.

[2] Note there may be other Warehouse Default Events beyond the takeout risk item described above. The consequences for a breach of these other Warehouse Default Events may be different than the one described above where the default is related to failure to takeout the warehouse facility by the end of the commitment period.

| | |
|---|---|
| | |
| | |
| | |

Document comparison by Workshare Compare on September-13-17 6:22:51 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24127131/1 |
| Description | #24127131v1<TorysAtWork> - ignore |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 93 |
| Deletions | 91 |
| Moved from | 4 |
| Moved to | 4 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 192 |

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY |
| **Subject:** | FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet |
| **Date:** | Thursday, September 14, 2017 9:56:33 AM |
| **Attachments:** | Province Change in Law Agreement (OPG_sCommentsSeptember13_17).docx<br>Blackline_ProvincialDraft.pdf<br>Blackline_DealerDraft.pdf |

---

**From:** RYFA Ken -TREASURY
**Sent:** Thursday, September 14, 2017 9:44 AM
**To:** LEE John -TREASURY
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Here it is.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Wednesday, September 13, 2017 6:35 PM
**To:** 'Fullerton, Rick' <RFullerton@osler.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Smith, Elliot' <ESmith@osler.com>; 'Innes, Michael' <MInnes@osler.com>; 'Bennett, Christopher' <CBennett@osler.com>; 'King, Richard' <rking@osler.com>; 'Royer, Kate' <KRoyer@osler.com>; 'Hughes, Timothy' <THughes@osler.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; 'alan.hibben@rogers.com' <alan.hibben@rogers.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; GRECO Clara -LAWDIV <clara.greco@opg.com>; GO Matthew -TREASURY <matthew.go@opg.com>; YAO Anthea -FUNDMGMT <anthea.yao@opg.com>; JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>; PRESTON Stuart -TREASURY <stuart.preston@opg.com>; DREWNIAK John -TREASURY <john.drewniak@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>; Feldman, Michael <mfeldman@torys.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Emes, Aaron <aemes@torys.com>; Leibel, Robbie <rleibel@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Slavens, Adam <aslavens@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'mfitzpatrick@hunton.com' <mfitzpatrick@hunton.com>; 'aobrian@hunton.com' <aobrian@hunton.com>; Watson, Gwen <gwatson@torys.com>
**Subject:** EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Osler team – please find attached a revised draft of the term sheet for the Provincial Change of Law Assumption Agreement (blacklined to the Province's draft as well as the draft you prepared on August 14). Please note that there are some formatting issues in the blacklines that do not appear in the clean word version.

Please also note that this draft is being concurrently circulated to OPG and remains subject to OPG's review. Please let us know if you or the dealers have any comments by no later than this Friday. We will need to circulate a revised draft of the term sheet to the Province by then.

Thank you,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

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

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

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder and made in connection thereto (the "**Regulation**").[1] This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

*This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance. |
| **Indenture Trustee:** | An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "**Master Trust Indenture**"). |
| **Beneficiaries:** | The Indenture Trustee, acting for and on behalf of the Specified Creditors. |

[1] Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.

| | |
|---|---|
| **Obligations Secured:** | Obligations Secured approved as contemplated below under Obligor Approval.[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or<br>(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.[3]<br>in each case, that is reasonably expected to adversely affect (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement or any of the agreements under which Obligations Secured arise without the agreement of the Indenture Trustee; or[4]<br>(B) a court of competent jurisdiction determines that all or a portion of the Act or the Regulation is *ultra vires*, invalid or inoperative in a way that adversely affects the ability of the Financing Entity to receive amounts on its investment |

[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.

[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.

[4] A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.

| | |
|---|---|
| | interest so that it can pay the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable. |
| **Obligation to Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |

| | |
|---|---|
| **Event of Default Cure:**[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| **Optional Assumption:** | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Obligations Secured remain outstanding. |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| **Obligor Approval:** | The Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:<br><br>In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]<br><br>It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:<br><br>(A) At least **[30 days]** prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "**Two Year Forecast**"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.<br><br>(B) the Manager shall provide the Obligor with an updated Two Year Forecast between **[6 and 9 months]** prior to the expiry of each current Two Year Forecast.<br><br>(C) Unless the Obligor provides the Manager with a written notice no later than **[3 months]** prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all |

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

[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder* ***and made in connection thereto*** *(the "**Regulation**").*[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act* ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable****. The provincial* ~~*protection and assurance*~~***assumption*** *arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the ~~Beneficiaries~~**Specified Creditors** in accordance with ~~a~~**the Master** Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance ~~acting together~~. |
| **Indenture Trustee:** | An indenture trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under an applicable~~**the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture")**. |
| **Beneficiaries:** | The Indenture Trustee, acting for ~~itself~~ and on behalf of ~~other persons entitled under~~**the** Specified ~~Claims~~**Creditors**. |
| ~~**Specified Claims**~~**Obligations Secured:** | ~~Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are~~**Obligations Secured** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | approved as contemplated below under Obligor Approval.<br>~~Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].~~[2] |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(B) (2) the Legislature enacts or amends any other statute;<br>(C) (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) **or amends** the ~~General~~ Regulation made under the Act or any portion thereof; ~~or~~<br>(D) (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*)~~,~~**; or**<br>(E) **(5) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]<br>(F) in each case, that ~~materially and~~**is reasonably expected to** adversely ~~affects~~**affect** (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

**[3] We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

| | |
|---|---|
| | pay ~~Specified Claims~~**the Obligations Secured** or (b) the Change of Law Assumption Agreement or any of the agreements under which ~~Specified Claims~~**Obligations Secured** arise without the agreement of the Indenture Trustee; or[4]<br><br>(G) a court of competent jurisdiction ~~in a final and non-appealable judgement~~ determines that all or a portion of the Act or the Regulation is *ultra vires*~~,~~ **invalid or inoperative** in a way that ~~materially and~~ adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay ~~Specified Claims~~**the Obligations Secured including, without limitation, a declaration that any funding obligations of the Financing Entity or any investment interests are invalid or unenforceable**. |
| **Obligation to ~~Assume Specified Claims~~Pay the Obligations Secured:** | Upon the occurrence of an Assumption Event, ~~the Indenture Trustee will have the right to require~~ the Obligor ~~to~~**will** pay the ~~amount of Specified Claims~~**amounts pertaining to the Obligations Secured** on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the **Master** Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages~~, or for economic loss or loss of profits~~. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of ~~a Specified Claim~~**an Obligation Secured**, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the ~~Specified Claim~~**Obligations Secured**, including the security interest in ~~each related investment interest and related~~**the** property of the Financing Entity~~ and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent~~. |
| **Event of Default Cure:**[5] | **Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the** |

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

[5] **We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.**

| | |
|---|---|
| | **Obligor would have the following rights:**<br>**(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a notice to the Financing Entity through OPG as the manager) that a Default has occurred;**<br>**(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and**<br>**(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.**<br>**(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor.** |
| **Optional ~~Replacement~~Assumption:** | At any time following ~~the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable~~**an Assumption Event or an Event of Default**, the Obligor shall be entitled (but not obligated) to ~~replace the Financing Entity as obligor and debtor and directly~~ assume all of the ~~Financing Entity's outstanding obligations and liabilities~~**Obligations Secured**. The Financing Entity (including through the ~~Financial Services~~ Manager) will ensure that any ~~obligation and liabilities undertaken or assumed by it will~~**Obligations Secured** by their **contractual** terms permit ~~such a replacement and assumption (or, if applicable, satisfaction and termination)~~**, on an Assumption Event or an Event of Default, an assumption** by the Obligor ~~without additional cost or penalty and~~ without any requirement for further consent, approval or |

| | |
|---|---|
| | agreement **of the applicable Specified Creditor**. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any ~~Specified Claim remains~~**Obligations Secured remain** outstanding. |
| **Obligor Approval:** | The<~~ *Change of Law Assumption Agreement* >~~will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the~~ Change of Law Assumption Agreement will apply to ~~Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~**all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the**> *Change of Law Assumption Agreement* <**in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br>**(C)** ~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ **Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on September-13-17 6:21:56 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/1 |
| Description | #24124144v1<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 67 |
| Deletions | 46 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 115 |

~~**Provincial Protection and Assurances**~~

# Change of Law Assumption Agreement

## Indicative Term Sheet

## Ontario Fair Hydro Plan Act, 2017

*This* ***indicative*** *term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017* ***(the "Act")*** *and the regulations* ~~*to be*~~ *made thereunder* ***and made in connection thereto*** *(the "*~~***Act***~~***Regulation***").[1] *This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act*~~.~~ ***or the August 23, 2017 draft of the Master Trust Indenture (as defined below), as applicable. The provincial assumption arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.***

***This Term Sheet does not discuss the servicing commingling risk and the warehousing takeout risk, which will be addressed separately by the following (i) the Master Transfer and Servicing Agreement will include an obligation for the IESO to provide a letter of credit if required to support the Funding Obligations in an amount equal to one month of anticipated collections of the clean energy adjustments by all non-rated local distribution companies, and (ii) there will be a step up in pricing reflected in the documents evidencing the short term debt issuance.***

| | |
|---|---|
| **Change ~~in~~of Law ~~Guarantee~~Assumption Agreement:** | **A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Specified Creditors in accordance with the Master Trust Indenture.** |
| **~~Guarantor~~Obligor:** | The Province of Ontario**, by the Minister of Energy and the Minister of Finance.** |
| **Indenture Trustee:** | **An indenture trustee, acting for and on behalf of the Specified Creditors under a master trust indenture to be entered into by the Financing Entity, as issuer (the "Master Trust Indenture").** |
| **Beneficiaries:** | **The Indenture Trustee, acting for and on behalf of the Specified Creditors.** |
| **Obligations Secured:** | **Obligations Secured approved as contemplated below under** |

[1] **Regulations covered by the Change of Law Assumption Agreement must also include the regulations obligating the IESO to pay the debt carrying costs during the moratorium period.**

| | |
|---|---|
| | **Obligor Approval.**[2] |
| ~~**Guarantee Activation**~~**Assumption Events:** | Any of the following would constitute ~~a Guarantee Activation~~an Assumption Event:<br>(A) ~~the Legislative Assembly of Ontario repealing (and not replacing~~**(1) the Legislature repeals (and does not replace** on an equivalent basis) **or amends** the Act or any ~~Regulation made thereunder;~~ **portion thereof;**<br>(B) ~~(B) the Legislative Assembly of Ontario causing to come into force any~~ **(2) the Legislature enacts or amends any other** statute**;** ~~(including any amendment to the Act or a Regulation made thereunder), or causing to come into force or making any order-in-council or regulation, or causing to come into force any other discriminatory action (including by way of any order by the Ontario Energy Board), in any case, in a way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~<br>(C) **(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof;**<br>(D) **(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); or**<br>(E) **(5)** >*there is a change in the organization, structure*<> *or operations* <**of the** |

**[2] "Obligations Secured" is a defined term in the Master Trust Indenture and encompasses all debts and liabilities of the Financing Entity owing to the Specified Creditors and captures subordinated debt as well. As discussed on the call with Blakes and the Provincial legal team, excluding subordinated debt from the benefits of the Assumption Agreement will increase the pricing of such debt, the costs of which would ultimately be passed on to ratepayers.**

>*IESO or a change in the electricity market structure or operations* <**not otherwise effected through the actions described in clauses (A)(1) through (4) above.**[3]

(F) **in each case,** that is reasonably expected to ~~limit~~**adversely affect (a)** the ability of the Financing Entity to receive amounts on its investment interest ~~such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected;~~

(G) ~~(C) the Legislative Assembly of Ontario directly or indirectly amending the Guarantee~~**so that it can pay the Obligations Secured or (b) the Change of Law Assumption Agreement** or any of the ~~financing transaction~~ agreements **under which Obligations Secured arise** without the agreement of the ~~Financing Entity;~~**Indenture Trustee; or**[4]

**(H)** ~~(D)~~ a court of competent jurisdiction ~~(i) declares any funding obligations of the Financing Entity to be~~<~~*invalid or unenforceable*~~> ~~or (ii) in a final and non-appealable judgement~~ determines that all or a portion of the Act **or the Regulation** is *ultra vires*, **invalid or inoperative** in a way that adversely affects the ~~rights and interests of the Financing Entity, including, for greater certainty, in any manner that is reasonably expected to limit the~~ ability of the Financing Entity to receive amounts on its investment interest ~~such~~**so** that it can pay ~~its specified creditors, including making payments on its~~**the Obligations Secured including, without limitation, a declaration that any** funding obligations ~~on the same basis as before such judgement; or~~

**(I)** ~~(E)~~ <~~*there is a change in the organization, structure*~~> <~~*or operations*~~>of the <~~*IESO or a change in the electricity market structure or operations*~~>~~in any way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner~~

[3] **We understand certain internal changes to the structure of the IESO may be made by the IESO board without statutory enactments.**

[4] **A materiality qualifier is not appropriate since a change of law that would result in either (a) or (b) is by its nature material.**

| | |
|---|---|
| | ~~that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected~~ **~~[NTD: Alternatively, with respect to the IESO servicing obligations, include the Servicing Guarantee language with respect to the IESO that was included in the last mark-up of the term sheet received from the Province.]~~**Financing Entity or any investment interests are> *invalid or unenforceable*<. |
| ~~Guarantee~~Obligation to Pay the Obligations Secured: | Upon the occurrence of ~~a Guarantee Activation Event, the Guarantor shall immediately assume and pay when~~an Assumption Event, the Obligor will pay the amounts pertaining to the Obligations Secured on behalf of the Financing Entity when they become due and payable (without acceleration)~~ all of the obligations of the Financing Entity. The obligations of the Financing Entity include its funding obligations as well as any other obligation the Financing Entity has related to the Fair Hydro program such as payments to service providers (such as trustees, auditors, etc), rating agencies and any fees due to the securities commissions~~. The exercise of such right by the Indenture Trustee in accordance with the Master Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages. |
| Subrogation: | Upon paying an amount to a Beneficiary in respect of an Obligation Secured, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Obligations Secured, including the security interest in the property of the Financing Entity. |
| Event of Default Cure:[5] | Upon the occurrence of a Default under the Master Trust Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Obligor would have the following rights:<br>(A) a right to receive written notice from the Indenture Trustee (at the same time that such trustee provides a |

[5] We have layered in our proposal on acceleration which was provided to all parties in a memo from OPG dated August 30, 2017.

| | |
|---|---|
| | notice to the Financing Entity through OPG as the manager) that a Default has occurred;<br>(B) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the Financing Entity), a right to receive written notice from the Indenture Trustee that an Event of Default has occurred; and<br>(C) a right (but not an obligation) to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Master Trust Indenture with respect to the applicable Event of Default.<br>(D) The Master Trust Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations Secured may not be accelerated until the expiry of the cure period available to the Obligor. If the Default or Event of Default in question cannot be cured by the Obligor on behalf of the Financing Entity within this cure period, then the Obligor will have the option (but not an obligation) to "cure" and avoid acceleration of the Obligations Secured by assuming those Obligations Secured. In such circumstances, the Fair Hydro program would be discontinued and the Obligations Secured owing under the program would be those of the Obligor. |
| Optional Assumption: | At any time following an Assumption Event or an Event of Default, the Obligor shall be entitled (but not obligated) to assume all of the Obligations Secured. The Financing Entity (including through the Manager) will ensure that any Obligations Secured by their contractual terms permit, on an Assumption Event or an Event of Default, an assumption by the Obligor without any requirement for further consent, approval or agreement of the applicable Specified Creditor. |
| **Term:** | The ~~Guarantee~~Change of Law Assumption Agreement will continue for as long as ~~the Financing Entity has~~ any Obligations Secured remain outstanding~~ financing or other contractual obligations and until such obligations have all been paid in full or otherwise satisfied~~. |
| Obligor **Approval**~~-~~ | The ~~guarantee agreement containing the terms and conditions contemplated by this term sheet shall be entered into prior to the~~ |

| | |
|---|---|
| ~~**Requirement**~~**:** | ~~Financing Entity incurring its first funding obligation. The Province shall enter into the guarantee based on forms of program and series financing documents required for each financing transaction (e.g., form of supplemental indenture). As long as the financing transaction documents are generally consistent with the agreed upon form, the Province's specific approval for specific funding obligations incurred by the Financing Entity will not be required. Subsequent approval is only needed if the form of such documents are materially changed. For greater certainty, deal specific terms (such as tenor, pricing, etc) shall not be considered a change in the form of transaction and series documents~~**Change of Law Assumption Agreement will apply to all Obligations Secured that are incurred by an "Eligible Financing Entity" designated as such in accordance with the following process:**<br><br>**In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will review the constating documents of such Financing Entity and the various program agreements. Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, the Manager will notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective.[6]**<br><br>**It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following process:**<br><br>**(A) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, the Manager will provide the Obligor with a forecast of the principal amount of Funding Obligations that the Manager expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the** |

**[6] We have not included an express right of the Province to review and sign off on program agreements since that is subsumed in the concept of Eligible Financing Entity – the Province will confirm it is comfortable with such documents prior to designating a Financing Entity an Eligible Financing Entity.**

| | |
|---|---|
| | **Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.**<br><br>**(B) the Manager shall provide the Obligor with an updated Two Year Forecast between [6 and 9 months] prior to the expiry of each current Two Year Forecast.**<br><br>**(C) Unless the Obligor provides the Manager with a written notice no later than [3 months] prior to the expiry of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations and all other Obligations Secured in connection thereto incurred up to the expiry of the new Two Year Forecast.** |
| **FIPPA:** | The ~~parties~~**Change of Law Assumption Agreement** will acknowledge that the ~~Guarantor~~**Obligor** will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the ~~Guarantor~~**Obligor**, or any agent or representative of the ~~Guarantor~~**Obligor** in connection with the ~~Guarantee~~**Change of Law Assumption Agreement,** may be subject to disclosure in accordance with the act or as otherwise required by law**.** |
| **Representations and Warranties:** | To be determined ~~based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Guarantor and~~**by the Minister of Finance and Minister of Energy in negotiation with** the Financing Entity**.** |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the ~~Guarantor~~**Obligor** and the Financing Entity**.** |
| **Governing Law:** | Province of Ontario**.** |

~~**Warehousing Takeout Risk and Servicing (Commingling) Risk**~~

~~*Note – these items are provided for information purposes only as these risks were included in the previous version of the term sheet as items that the Dealers/OPG were looking for the Province for protection against. The current proposals with respect to these items is described below. These do not contain any requirement for the Province to directly backstop these risks.*~~

| | |
|---|---|
| **Commingling Risk (applies to Warehouse as well as any Term transactions)** | |
| **Commingling Risk Mitigant:** | For any LDC which is not investment grade rated by each of the rating agencies which are rating the funding obligations (the "Non-Investment Grade LDCs"), either:<br>(A) The IESO must post a Letter of Credit (L/C), or deposit funds in a Commingling Reserve Account in a quantum equal to the Commingling Risk Amount; or<br>(B) The IESO, for so long as it is rated investment grade by the rating agencies which are rating the funding obligations, will assume responsibility for commingling risk by the LDCs and will agree to remit to the Financing Entity any clean energy adjustment amounts collected by the LDC, regardless of whether the LDC remitted those amounts to the IESO for remittance to the Financing Entity |
| **Commingling Risk Amount:** | An amount equal to the sum of the expected Clean Energy Adjustment collections from the Non-Investment Grade LDCs over the next [45-60] days |
| **Commingling Risk Amount Reset Date:** | Each settlement date for the Financing Entity (monthly) |
| **Beneficiary:** | The beneficiary of the L/C or the Commingling Reserve Account would be the Financing Entity and the Indenture Trustee for the benefit of the creditors of the Financing Entity. The Financing Entity and/or the Indenture Trustee would have the ability to draw down the L/C or draw on the Commingling Reserve Account for any clean energy adjustment amounts expected to be received from the IESO but which were not received due to those funds not being remitted from an LDC to the IESO for that period |
| **L/C Provider:** | An entity rated at least A+ (or equivalent) |
| **Approvals:** | The approach is subject to approval from the IESO, by the rating agencies rating the funding obligations of the Financing Entity and the risk management areas of the banks providing the warehouse facilities |
| | |
| **Warehouse Takeout Risk** | |
| **Commitment Period for** | |

| | |
|---|---|
| **Warehouse[1]:** | Expected to be 12-24 months |
| **Takeout for Warehouse:** | Expected to be every 3-6 months |
| **Warehouse Default Event:** | One of the events of default for the warehouse will be the failure to repay the warehouse facility at the end of the commitment term |
| **Consequences of Warehouse Default Event:** | If the Warehouse Default Event[2] described above occurs, all amounts funded through the warehouse would become immediately due and payable, subject to the Warehouse Default Payment Cap, and Default Pricing will be charged on any amounts funded through the warehouse facility |
| **Default Pricing:** | Step up in pricing to [x] until the moratorium period ends and thereafter stepping up in increments of [y] every six months until the warehouse facility is repaid |
| **Warehouse Default Payment Cap:** | For any given reference period following the occurrence of a Warehouse Default Event, the amount that shall be remitted to the Financing Entity for repayment of the warehouse facilities will be the sum of (x) the interest amount due on the warehouse facilities (which, for greater certainty will include any program fees) and (y) the lessor of:<br>(a) The outstanding amount funded through the warehouse facilities; and<br>(b) The maximum amount that can be charged for that period so that clean energy adjustments are equal to, but do not exceed, the fair allocation amount for such period. |
| **Approval Requirement:** | Subject to approval by the risk management areas of the banks providing the warehouse facilities which will in part depend on receipt of information on the fair allocation curve and an understanding of how long the "tail risk" could be following a Warehouse Default Event |

[1] Please note that this is not intended to be an exhaustive list of terms for the warehouse facility, but rather is a summary of a few select terms that relate to the warehouse takeout risk.

[2] Note there may be other Warehouse Default Events beyond the takeout risk item described above. The consequences for a breach of these other Warehouse Default Events may be different than the one described above where the default is related to failure to takeout the warehouse facility by the end of the commitment period.

| | |
|---|---|
| | |
| | |
| | |

Document comparison by Workshare Compare on September-13-17 6:22:51 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24127131/1 |
| Description | #24127131v1<TorysAtWork> - ignore |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24124144/3 |
| Description | #24124144v3<TorysAtWork> - Province Change in Law Agreement (OPG'sCommentsSeptember13/17) |
| Rendering set | strikeout-colour |

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

| Statistics: | |
|---|---|
| | Count |
| Insertions | 93 |
| Deletions | 91 |
| Moved from | 4 |
| Moved to | 4 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 192 |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Gadi Mayman; Anna Strathy; Mike Manning; Ronald Kwan; John Kim |
| **Subject:** | FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet |
| **Date:** | Thursday, September 14, 2017 1:26:09 PM |
| **Attachments:** | 23148306-v16-Term Sheet - Provincial Support Agreement - May 12.DOCX<br>23148306-vpdf-Term Sheet - Provincial Support Agreement - May 12.PDF |

FYI, note as per Anna's previous email this will be reviewed by Tory and Osler hopefully with minimal comments and back to us EOD.

Thanks

Ken k

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

**Sent:** Thursday, September 14, 2017 1:18 PM

**To:** Malle Hanslep (MOF)

**Cc:** Tobias P. Whitfield (MOF) ; Tom McKinlay (MAG) ; Ken Kandeepan ; Thouin, Alena (ENERGY)

**Subject:** RE: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Hi. Here are the changes to the term sheet based on the calls. Happy to discuss before 2. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Thursday, September 14, 2017 12:31 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** Whitfield, Tobias P. (MOF); McKinlay, Tom (ENERGY); Kandeepan, Ken (OFA); Thouin, Alena (ENERGY)
**Subject:** RE: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Yes we'll call in now.

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 14, 2017 12:30 PM
**To:** Hanslep, Malle (MOF)
**Cc:** Whitfield, Tobias P. (MOF); McKinlay, Tom (ENERGY); Kandeepan, Ken (OFA); Thouin, Alena (ENERGY)
**Subject:** RE: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Do you want to speak for a few minutes now?
I will open up the following line for anyone who is free:
4169333865
Pass 9845204
Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Thursday, September 14, 2017 10:23 AM
**To:** ASHBOURNE, STEPHEN
**Subject:** RE: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

It's at 10:30 now.

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 14, 2017 10:10 AM
**To:** Hanslep, Malle (MOF)
**Subject:** RE: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Are we having the 10am call?
Stephen R. Ashbourne

Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Thursday, September 14, 2017 10:07 AM
**To:** ASHBOURNE, STEPHEN; Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY)
**Cc:** Whitfield, Tobias P. (MOF)
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 14, 2017 10:05 AM
**To:** Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Donaldson, Mark (TBS)
**Cc:** Strathy, Anna (OFA)
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Adding Mark and Anna.

**From:** Mike Manning
**Sent:** Thursday, September 14, 2017 10:01 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Just received. This I believe incorporates E&Y comments.
Mike

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Thursday, September 14, 2017 9:56 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

**From:** RYFA Ken -TREASURY
**Sent:** Thursday, September 14, 2017 9:44 AM
**To:** LEE John -TREASURY <john.s.lee@opg.com>
**Subject:** FW: EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

Here it is.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]

**Sent:** Wednesday, September 13, 2017 6:35 PM
**To:** 'Fullerton, Rick' <RFullerton@osler.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Smith, Elliot' <ESmith@osler.com>; 'Innes, Michael' <MInnes@osler.com>; 'Bennett, Christopher' <CBennett@osler.com>; 'King, Richard' <rking@osler.com>; 'Royer, Kate' <KRoyer@osler.com>; 'Hughes, Timothy' <THughes@osler.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; 'alan.hibben@rogers.com' <alan.hibben@rogers.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; GRECO Clara -LAWDIV <clara.greco@opg.com>; GO Matthew -TREASURY <matthew.go@opg.com>; YAO Anthea -FUNDMGMT <anthea.yao@opg.com>; JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>; PRESTON Stuart -TREASURY <stuart.preston@opg.com>; DREWNIAK John -TREASURY <john.drewniak@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>; Feldman, Michael <mfeldman@torys.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Emes, Aaron <aemes@torys.com>; Leibel, Robbie <rleibel@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Slavens, Adam <aslavens@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'mfitzpatrick@hunton.com' <mfitzpatrick@hunton.com>; 'aobrian@hunton.com' <aobrian@hunton.com>; Watson, Gwen <gwatson@torys.com>
**Subject:** EXTERNAL – RE: Fair Hydro - Provincial Change of Law Assumption Term Sheet

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Osler team – please find attached a revised draft of the term sheet for the Provincial Change of Law Assumption Agreement (blacklined to the Province's draft as well as the draft you prepared on August 14). Please note that there are some formatting issues in the blacklines that do not appear in the clean word version.
Please also note that this draft is being concurrently circulated to OPG and remains subject to OPG's review. Please let us know if you or the dealers have any comments by no later than this Friday. We will need to circulate a revised draft of the term sheet to the Province by then.
Thank you,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

[na01.safelinks.protection.outlook.com]

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

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

joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**<u>Provincial Protections and Assurances</u>**

**<u>Indicative Term Sheet</u>**

**<u>Ontario Fair Hydro Plan Act, 2017</u>**

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

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

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

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

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

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*)~~,~~;<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity~~ and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the~~ |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| | ~~Obligor's prior written consent~~. |
| **Optional ~~Replacement~~Assumption:** | At any time following the ~~exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable~~occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to ~~replace~~assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor~~ and directly assume all of the Financing Entity's outstanding obligations and liabilities~~. The Financing Entity (including through the Financial Services Manager) will ensure that ~~any obligation and liabilities undertaken or assumed by it will by their terms~~Specified Claims permit such ~~a replacement and assumption (or, if applicable,~~an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination~~) by the Obligor without additional cost or penalty and without~~ of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will ~~become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~<br><br>~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

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

Document comparison by Workshare Compare on Thursday, September 14, 2017 1:14:40 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23148306/15 |
| Description | TOR_2528-#23148306-v15-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Document 2 ID | PowerDocs://TOR_2528/23148306/16 |
| Description | TOR_2528-#23148306-v16-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 19 |
| Deletions | 18 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 37 |

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | MAUTI John -FIN & C CTRL; Veinot, Cindy (TBS) |
| **Subject:** | FW: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 13, 2017 6:27:34 PM |
| **Attachments:** | Response to OPG comments on Change of Law Protection Agreement.docx |

Mike:
The response is helpful in terms of helping to explain the Province thinking but does little in terms of addressing the accounting gap as it relates to the E&Y concerns.
I think it may be more productive to have a meeting with John Mauti, Cindy Veinot and myself on Monday to discuss what can be changed to close the accounting gap. We can only provide advice. Ultimately, the Province controls the pen on this agreement and the risk is yours to bear.
John

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Friday, October 13, 2017 4:47 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; WONG Leslie -LAWDIV ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Hanslep, Malle (MOF) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; LADAK Lubna -TREASURY
**Subject:** EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.
We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.
We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.
Best
Toby

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

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael;

Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection

Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis

(OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

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

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free

to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing

Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

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

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

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

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

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you**

**are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

[NOTE TO DRAFT: CONFIRM THAT TORYS IS REFERRING TO THE OFA/MOE PROPOSAL FROM SEPTEMBER 27TH. ]

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

**Accounting Issues:**
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

[There is minimal oversight and input from the Province so long as the pre-agreed scope and parameters are adhered to.]

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

[The proposal is that basic information regarding an incurrence will be provided to enable the province to (1) understand the nature and scope of the incurrence, to enable the Province to address internal governance considerations and (2) to be satisfied that the proposed incurrences are in-line with the pre-agreed parameters (the "Parameters"). The intention is not to curtail incurrences that follow the pre-agreed approach. The timing of the notice to the Province may be a point of discussion.]

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
[As the entity running the program, OPG will be expected to provide the province with information sufficient to enable the province to make sure any incurrence falls inside the Parameters. The delivery of a certificate in an agreed form, just prior to the time of the incurrence, is meant to create a brightline test for the financing entity's counterparties to know that, so long as the certificate has been delivered (even if it's inaccurate), the Province will be bound. As you suggest below, any inaccuracy will give rise to considerations between the province and OPG. The delivery of the certificate at the time of an incurrence is considered an important due diligence confirmation for the province.
What is the basis for E&Y expressing a reservation regarding the province having access to underlying information about the "approved obligations", which in turn will define the scope of the

province's own obligations if called upon under the change of law protection agreement (CLPA)?]
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
[Any surety in a similar circumstance would want to know the nature and extent of the obligations incurred and to be incurred. That information is intended to allow the province to ensure compliance with the Parameters. Please provide an alternative proposal that meets OPGs requirements and still provides adequate information for the Province.]
-the negative pledge with respect to the exercise of certain options on the debt
[The idea is that if there is optionality in favour of the financing entity, and the exercise would affect the payment profile under the CLPA, such an exercise following a Protection Event should not affect the Province's payment obligations. In effect, the payment schedule will crystalize and cannot be accelerated or extended once the province becomes obligated to pay, following a Protection Event.]
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
[The Province needs to understand the overall credit picture of the financing entity since it will become a creditor (through subrogation) if it is called on to perform. Exclusions are narrowly defined and should be minimal in practice.]

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have.
[These checks and balances are in-line with the province not writing a "blank cheque" in relation to future incurrences. Prudent sureties would be expected to exercise diligence - indeed to do less could be evidence of interdependence and non-arm's length terms, which presumably would be unhelpful to E&Y's analysis. ] Please also advise if the Province's accountants have reviewed the proposal.
[The Province's accountants are involved in this process and are also reviewing the proposal]

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated.

[The OFHPA will involve very significant and complex financings. The process is intended to provide an appropriate level of third party enquiry given the size and scale of the financing program to the province and in order to ensure the issuances are within the Parameters. ] From our perspective, as drafted, OPG will likely have to seek Provincial approval
[No approval is contemplated or expected by the Province, except if the incurrence is outside of the pre-agreed boundaries.] on each debt issuance (which weakens the accounting as discussed above)
[An explanation of the relevant accounting principles that E&Y has expressed concern about would assist the province to understand E&Y'S concerns. Also, a detailed list of any particular troublesome requirements would be helpful, with drafting suggestions as appropriate] [The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself.
[From the dealers' perspective, the three listed requirements (namely, (1) quantum under the program limit (2) delivery of the OPG certificate (3) absence of contrary notice from the Province) can be easily and objectively verified by the dealers. These process requirements should be reflected in the incurrence procedures as a check/balance at the relevant time, given that the province will not otherwise be directly involved in the incurrence process but will be obligated under the CLPA] Setting aside the mechanics of how we get there, the dealers want

comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement.

[As noted above, the three listed requirements can be easily and objectively confirmed by the dealers prior to a closing. inaccuracies or other failures within the certification process will not negate the Province's obligations] We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met.

[As noted, this due diligence check/balance is how the province will ensure the issuances satisfy the Parameters. It is anticipated that the Ministers will see this process as significant to the exercise of their authorities under OFHPA 5(3). Ultimately, the Province will depend on OPG, which is why the delivery of a certificate, without being impugned by an accuracy, is the contemplated adherence condition - rather than making the confirmation of certificate accuracy a condition, which we assume would be unwelcome by the underwriters.] The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

[The Province wants an actual certificate to be delivered to it (not just the indenture trustee) as part of the closing process. Also, the program limit and failsafe disapproval notice are considered to be important safeguards for the province]

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.
- [In the case of details not known at the time the OPG certificate is to be delivered (which will be expected to occur close to closing), it should be sufficient to indicate the process by which those details will be finalized. For example, it would be sufficient to say "interest rates to be set on or about [date] based on underwriting syndicate pricing indications".]

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- [The proposal uses the specific defined terms from the OFHPA and regulation, in order to tie back to the statute and appropriately narrow the scope to the obligations that are reasonably known to require protection from the province. Considerable thought has been given to the approach reflected in the province's proposal. The Province wishes to focus on each inclusion that requires the support arrangements, which should then be net of available/free cash flows, set-offs, etc. Please provide specific comments on any specific items of concerns.]
- We'd like to understand the reason OPG's management fees have been excluded. [This is still an open question under consideration.] We assume you do not intend for OPG's

reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? [Under consideration] Please advise why taxes are being excluded?

[CRA does not require/is not entitled by law to the benefit of the protection arrangement. Please explain the logic of the request to include taxes]

- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

[For the Province's support arrangement to apply to an obligation, the quantum of the obligation must be factored into the program maximum test. if the obligation is a contingent obligation, the province's obligations must be capped so that the amount of the cap can be factored into the program limit test]

- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

[In the interest of time, please provide any other detailed comments you may have on the September 27th version of the proposal as soon as possible]

| | |
|---|---|
| **From:** | Sarah Harris |
| **To:** | Mike Manning |
| **Cc:** | Opal Kandelas; Jean-Francois Beaupre |
| **Subject:** | FW: Energy"s PRRT |
| **Date:** | Wednesday, October 18, 2017 9:56:00 AM |

---

Hi Mike,
Just letting you that Ken K. will be discussing with Gadi this morning whether a Ministerial directive will once again be sought for the IESO intercept provision exemption, or to keep pursuing the tripartite letter between IESO-Energy-OFA to include the intercept.
Thanks,
Sarah

---

**From:** Ken Kandeepan
**Sent:** Wednesday, October 18, 2017 9:46 AM
**To:** John Kim ; Lisa Stein
**Cc:** Sarah Neville ; Anna Strathy ; Sarah Harris ; William Tan ; Gavin He ; Bruno Amara
**Subject:** RE: Energy's PRRT
Will confirm this AM.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Wednesday, October 18, 2017 9:45 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Absolutely it is Gadi. Do we have his instruction?

---

**From:** Ken Kandeepan
**Sent:** Wednesday, October 18, 2017 9:44 AM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Thanks John, who is making this decision and shouldn't that be Gadi
Let me know
Ken k

---

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:57 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Hi Ken,
From the start, the exemption had been the advocated path. I will keep this interception option open until the decision is made to pursue Minister's directive or when we have that directive signed. We can always walk away from this option.
Thanks,
John

---

**From:** Ken Kandeepan
**Sent:** Tuesday, October 17, 2017 1:44 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Hi John
Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.
It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:37 PM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** FW: Energy's PRRT

Hi Lisa and everyone,
Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund. Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.
One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.
John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, October 17, 2017 11:18 AM
**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

**Subject:** RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.
James

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** October 13, 2017 4:49 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
**Subject:** RE: Energy's PRRT

Hi James,
The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?
Thanks,
John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 1:29 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

You are correct.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 1:28 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
**Subject:** RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.
Agree?

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 1:19 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.
There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing

costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:57 PM
**To:** Strang, James (TBS)
**Subject:** RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 12:55 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Subject:** RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:55 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** RE: Energy's PRRT

Last year's?

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 12:54 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:53 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Sarah Harris |
| **To:** | Mike Manning |
| **Cc:** | Jean-Francois Beaupre; William Tan; Opal Kandelas |
| **Subject:** | FW: Energy"s PRRT |
| **Date:** | Tuesday, October 17, 2017 1:50:17 PM |

Hello Mike,
As a follow up to our conversation on Friday regarding IESO intercept letter and possible pushback from OPG, it looks like there will need to be a re-think on the Ministerial Directive.
We'll keep you posted.
Thanks,
Saraj

**From:** Ken Kandeepan
**Sent:** Tuesday, October 17, 2017 1:44 PM
**To:** John Kim ; Lisa Stein
**Cc:** Sarah Neville ; Anna Strathy ; Sarah Harris ; William Tan ; Gavin He ; Bruno Amara
**Subject:** RE: Energy's PRRT
Hi John
Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.
It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.
Thanks
Ken k

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:37 PM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** FW: Energy's PRRT
Hi Lisa and everyone,
Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund. Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.
One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.
John

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, October 17, 2017 11:18 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.
James

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** October 13, 2017 4:49 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
**Subject:** RE: Energy's PRRT

Hi James,
The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?
Thanks,
John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 1:29 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

You are correct.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 1:28 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
**Subject:** RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.
Agree?

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 1:19 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.
There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO

submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:57 PM
**To:** Strang, James (TBS)
**Subject:** RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 12:55 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Subject:** RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:55 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** RE: Energy's PRRT

Last year's?

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 12:54 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:53 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Sarah Harris |
| **To:** | Mike Manning |
| **Cc:** | Opal Kandelas; William Tan |
| **Subject:** | FW: Energy"s PRRT |
| **Date:** | Thursday, October 19, 2017 9:54:32 AM |

---

Hello Mike,
Just a quick update on IESO intercept provision issue…I followed up with John on the status of Ken's meeting with Gadi yesterday, and we're going to continue seeking execution of the tripartite (IESO-Energy-OFA) letter for now.
Thanks,
Sarah

---

**From:** John Kim
**Sent:** Thursday, October 19, 2017 9:50 AM
**To:** Sarah Harris
**Subject:** RE: Energy's PRRT
Hi Sarah,
It is still on….waiting on IESO side now.
I didn't think it made sense to shut down an option at this point and they agreed to it.
John

---

**From:** Sarah Harris
**Sent:** Thursday, October 19, 2017 9:49 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Hi John,
Just wondering if you heard from Ken re: his meeting with Gadi and any further direction on the Ministerial Directive vs. the tripartite letter approach?
Thanks,
Sarah

---

**From:** Ken Kandeepan
**Sent:** Wednesday, October 18, 2017 9:59 AM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
My meeting with Gadi on this and other issues has been rescheduled to 4PM today so will get back to you immediately after that.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Wednesday, October 18, 2017 9:57 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He

<Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Ok, thanks….all along this group had recommended the exemption directive option. That said, my advice would be to leave both options open but pls. let us know. I have spoken to Ron as well and he is onside with either approach.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, October 18, 2017 9:46 AM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Will confirm this AM.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Wednesday, October 18, 2017 9:45 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Absolutely it is Gadi. Do we have his instruction?

---

**From:** Ken Kandeepan
**Sent:** Wednesday, October 18, 2017 9:44 AM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Thanks John, who is making this decision and shouldn't that be Gadi
Let me know
Ken k

---

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:57 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT
Hi Ken,
From the start, the exemption had been the advocated path. I will keep this interception option open until the decision is made to pursue Minister's directive or when we have that directive signed. We can always walk away from this option.

Thanks,
John

---

**From:** Ken Kandeepan
**Sent:** Tuesday, October 17, 2017 1:44 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Hi John
Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.
It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:37 PM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** FW: Energy's PRRT

Hi Lisa and everyone,
Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund. Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.
One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.
John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, October 17, 2017 11:18 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.
James

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** October 13, 2017 4:49 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
**Subject:** RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 1:29 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

You are correct.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 1:28 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
**Subject:** RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 1:19 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.
There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

**From:** John Kim [mailto:John.Kim@ofina.on.ca]

**Sent:** August 18, 2017 12:57 PM
**To:** Strang, James (TBS)
**Subject:** RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 12:55 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Subject:** RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:55 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** RE: Energy's PRRT

Last year's?

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Friday, August 18, 2017 12:54 PM

**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>

**Subject:** RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:53 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Ken Kandeepan; Carlos Yep; James Devine; John Kim
**Subject:** FW: FHP Financing Plan and Execution Plan - Nov 16.docx
**Date:** Thursday, November 16, 2017 10:27:27 AM
**Attachments:** FHP Financing Plan and Execution Plan - Nov 16.docx

---

-----Original Message-----
From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: Thursday, November 16, 2017 9:46 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

# FAIR HYDRO TRUST
# FINANCING PLAN

[November] 2017

DRAFT

## Table of Contents

**A. Background** ..... 3
1. Financing Entity – Fair Hydro Trust ..... 4
2. OPG's Duties and Responsibilities ..... 5
3. Fair Allocation Amount and the Financing Plan ..... 6
**B. Principles and Assumptions of the Financing Plan** ..... 9
1. IESO Deferral for Future Months ..... 9
2. Future Transfers of Portions of the IESO's Regulatory Asset ..... 9
3. Term to Maturity of Funding Obligations ..... 9
4. Refinancing ..... 11
5. Cash Flow Requirements ..... 12
6. Current Funding Options and related Terms and Conditions ..... 12
7. Currency and Interest Rate Hedging Programs ..... 14
8. Fair Hydro Trust Costs and Expenditures ..... 14
9. Interest Rates ..... 14
10. Financing Reserve and Capital Accounts ..... 16
11. Indemnifications ..... 17
12. Financial Services Manager's Fees ..... 17
**C. Other Considerations** ..... 18
1. Market ..... 18
2. Application of Recovery Amounts to Funding Obligations ..... 18
3. Risk Mitigation Strategies ..... 20
4. Tax Minimization Strategies ..... 20
**D. Execution Plan for the Inaugural Debt Issuance** ..... 21

DRAFT

## A. Background

In June 2017, the Province enacted the *Ontario Fair Hydro Plan Act, 2017* (the Fair Hydro Act or the Act), to establish a framework under which the costs and benefits associated with the Government of Ontario's (the Province) clean energy initiatives are to be fairly allocated between present and future consumers of electricity under Ontario's Fair Hydro Plan (Fair Hydro Plan or FHP). The Act requires the Ontario Energy Board (OEB) to set rates that reduce average electricity bills for specified consumers by 25 percent commencing on July 1, 2017. The total bill reduction of 25 percent is comprised of an 8 percent reduction of the Provincial portion of the harmonized sales tax, with the remaining 17 percent achieved by decreasing energy rates for specified consumers paying the Regulated Price Plan rate and providing a global adjustment reduction credit for other specified consumers. The reduction in electricity bills will result in a shortfall in the Independent Electricity System Operator's (IESO) collections, which will need to be financed in order to pay the underlying global adjustment costs (GAC). The objective of the Fair Hydro Plan Program (FHP Program) is to refinance a portion of the deferred GAC over a longer period.

Under the Act, OPG is appointed as the Financial Services Manager (FSM) and is given the authority to, among other things, establish and manage one or more financing entities to raise debt financing (referred to as "funding obligations") for the purposes of the Act. The Act requires the Minister of Energy (MOE) to calculate the Fair Allocation Amount and for the FSM to incur funding obligations that, subject to refinancing, reasonably align with the Fair Allocation Amount, as adjusted by any readjustment amount.

The following attendant regulations were enacted in support of the Act:

- *Ontario Regulation 206/17 General* (General Regulation) provides details on specific requirements of the Act, in particular, the requirements for the Financing Plan.
- *Ontario Regulation 195/17 Fair Adjustment* provides details on rate reductions up to April 30, 2019 for specified consumers under the Act.
- *Ontario Regulation 196/17 Invoicing Requirements* provides details on information to be included with the invoice for specified consumers under the Act.

Under sections 21(1) and 21(2) of the Act, OPG, as FSM, has an obligation to prepare a Financing Plan in accordance with the Act and regulations, and to deliver it to the Minister of Energy. Under section 21(6) of the Act, the FSM has the right to amend the Financing Plan from time to time, without affecting any Clean Energy Adjustment that has already been determined or any funding obligations that have already been incurred before the amendment.

This Financing Plan was prepared based on the information available to, and the views of, OPG at the time this Financing Plan was prepared (or amended, as applicable). This Financing Plan also includes forward-looking information, which is subject to change. Actual outcomes and results may differ materially from what is expressed, implied or forecasted due to, but not limited to, changes in underlying assumptions relating to the Fair Allocation Amount, interest rates, investor interest, market capacity, market conditions, and credit rating assessments. References made to the "current Fair Allocation Amount" pertains to the Fair Allocation Amount received by OPG from the MOE at the end of September 2017. Terms that are capitalized and not defined herein have meanings ascribed to the same terms as in the Act or in the General Regulation. All amounts presented are in Canadian dollars.

## 1. Financing Entity – Fair Hydro Trust

Trustees

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

In **[**November**]** 2017, OPG as FSM, appointed BNY Trust Company of Canada, as the third party indenture trustee (BNY or Indenture Trustee). The Indenture Trustee will be acting on behalf of all specified creditors, who are all persons who may have contractual claims against the Trust under the FHP Program agreements contemplated by the Master Trust Indenture (MTI) governing the debt issued by the Trust.

Unitholders

The Trust will carry on activities for the benefit of its unitholders outlined below:

**Table 1: Fair Hydro Trust Unitholders**

| Unitholder | Number of Units Held |
|---|---|
| FHP2017 Inc., a wholly-owned subsidiary of OPG | 1,000,000 |
| BNY, as Indenture Trustee | 1 |
| Total Units Outstanding | 1,000,001 |

Trust Capitalization Structure

The Trust will be 100 percent debt financed and the contemplated source of funding is summarized in Table 2.

DRAFT

**Table 2: Type and Source of Debt Funding**

| Tranche and Debt Type | Source of Funding | % of Total Funding Requirement |
|---|---|---|
| Tranche A<br>Senior Debt | Capital Markets | 51% |
| Tranche B<br>Subordinated Debt | OPG via Province | 39% |
| Tranche C<br>Junior Subordinated Debt | OPG via Province | 5% |
| | OPG via Capital Markets | 5% |

The Trust will issue senior debt in the capital markets to finance 51 percent of the total funding requirement related to the deferred GAC (Tranche A). The financing platform was developed to allow the Trust access to both the Canadian and United States (US) markets in order to optimize pricing, provide flexibility, and market capacity. Further details on the types of financing that can be utilized are outlined under the heading *Current Funding Options*.

Through periodic equity injections in OPG, the Province is expected to provide 44 percent of the total funding requirement throughout the duration of the FHP Program. OPG will invest the proceeds from the equity injections into the Trust, with 39 percent in Tranche B as subordinated debt and five percent in Tranche C as junior subordinated debt.

OPG will invest the remaining five percent of the total funding requirement in Tranche C as junior subordinated debt, using internally generated funds or proceeds raised from debt issuances from the public markets.

## 2. OPG's Duties and Responsibilities

Financial Services Manager under the Act

OPG, as FSM, will perform its duties and responsibilities under the Act and its attendant regulations. These include, but are not limited to, the following:

- Establish one or more financing entities to incur funding obligations for the FHP Program
- Prepare a written Financing Plan to be used by OPG to evaluate the incurrence of funding obligations to acquire and finance a portion of the GAC deferral
- Ensure that funding obligations are incurred in a manner that is consistent with the Financing Plan
- Forecast the cash flow requirements of the financing entities
- Determine the monthly Clean Energy Adjustment for a particular ~~r~~Reference ~~p~~Period
- Administer the Investment Asset on behalf of the financing entities
- Establish and charge fees to the financing entities to recover costs and expenditures and to earn a return
- Seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of similar size and type

- Apply debt proceeds to purchase an Investment Interest or repay or redeem outstanding debt
- Consider the interests of specified consumers with respect to stable and predictable electricity rates
- Deal with related parties on arm's length terms
- Fulfil various reporting requirements to stakeholders

Manager under the Management Agreement

OPG has also entered into a management agreement with the Issuer Trustee, on behalf of the Trust, whereby all of the powers and duties of managing the Trust have been delegated to OPG as the manager. The duties and responsibilities associated with this role includes:

- Determining whether to incur funding obligations to acquire an Investment Interest or to refinance existing funding obligations;
- Negotiating and entering into program agreements;
- Maintaining accounts and banking records;
- Preparing any offering documents furnished by the Trust to prospective purchasers of funding obligations; and
- Preparing financial statements and tax filings on behalf of the Trust.

OPG's entitlement to fees, as FSM, is subject to the payment priorities outlined in the MTI and summarized in Section C, *Application of Recovery Amounts to Funding Obligations,* Figure 5. The FSM is not entitled to resign from its duties or terminate the management agreement as long as funding obligations remain outstanding. OPG may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the MTI.

## 3. Fair Allocation Amount and the Financing Plan

The Fair Allocation Amount, including the readjustment amount, is an amount calculated under the Act and the regulations by the MOE for every ~~r~~Reference Pp~~p~~eriod over the term of the FHP Program. It is intended to allocate the estimated Clean Energy Costs and Clean Energy Benefits fairly among specified consumers.

The FSM is required to prepare a Financing Plan under the Act to evaluate whether funding obligations should be incurred by the Trust. OPG is to have regard to certain prescribed principles (outlined in detail in Section B below), including that funding obligations should be incurred so that the estimated Finance Amount that would become due and payable during a ~~r~~Reference ~~p~~Period will, subject to refinancing, reasonably align with the Fair Allocation Amount determined in respect of such ~~r~~Reference Pp~~p~~eriod, as adjusted by a readjustment amount where applicable. In other words, the Financing Plan should contemplate the issuance of funding obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by specified consumers to ensure that they are bearing their fair share of the costs of providing Clean Energy benefits. The Act also provides that each funding obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

Figures 1 and 2 illustrate the FHP Program's financing profile over the next 30-year period.

**Figure 1: Fair Hydro Trust Debt Balance**

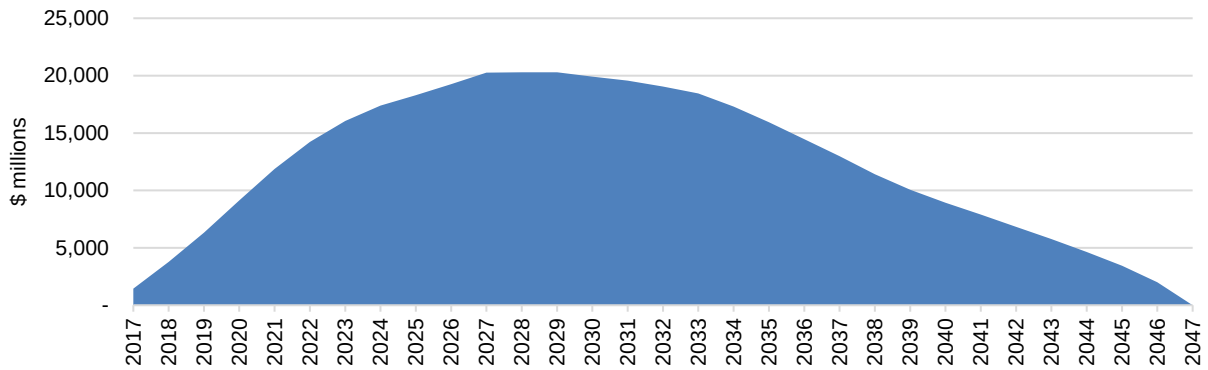
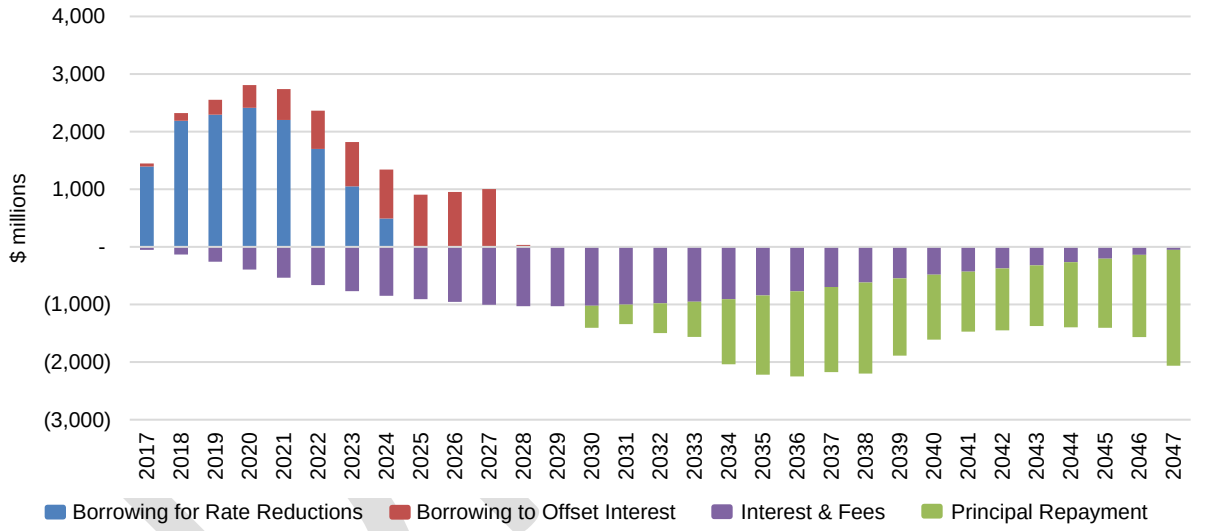



**Figure 2: Fair Hydro Trust Borrowing and Repayment Profile**




The Fair Allocation Amount is a net amount, either positive or negative, equal to the difference between the following:

1) estimated costs of clean energy initiatives without adjustment; and
2) a re-profiling of the costs in item 1) plus:
    a. the estimated operating and financing costs of the FHP Program, and
    b. the repayment of the readjustment amount.

A negative Fair Allocation Amount in any ~~r~~Reference P~~p~~eriod generally represents a period of borrowing, and a positive Fair Allocation Amount generally represents a period of principal repayment.

In a ~~r~~Reference ~~p~~Period when the Fair Allocation Amount is negative, the operating and financing costs of the FHP Program are shown in the Fair Allocation Amount calculation as an

increase in the debt of the FHP Program. This treatment is equivalent to increasing the amount of the deferred GAC by providing specified consumers with a higher rate reduction. The repayment of the related debt is included in the Fair Allocation Amount calculation to establish that all debt will be repaid by the end of the FHP Program. During these periods, operating and financing costs of the FHP Program are considered to align with the Fair Allocation Amount as long as these costs do not exceed the corresponding components in the Fair Allocation Amount calculation in any ~~r~~Reference ~~p~~Period by more than +/- 15 percent. If these costs exceed the corresponding components of the Fair Allocation Amount by more than +/- 15 percent, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount. Variability in costs is expected throughout the FHP Program as the Fair Allocation Amount was calculated on a forecast basis. Accordingly, any variability that is less than +/-
15 percent is deemed to be within an acceptable range.

Assessment for Reasonable Alignment

The Act stipulates that the Financing Plan must reasonably align with Fair Allocation Amount. This requirement is expected to be achieved through the consistent application of the following methodology, guidelines, and steps throughout the term of the FHP Program:

- Maintain a financial model that captures the funding obligations requirements of the Trust. Translate the funding requirements into expected cash flows by determining the related interest amounts, reserve requirements, fees, principal repayment, and the Trust's operating costs. This exercise will be performed for each ~~r~~Reference ~~p~~Period over the term of the program.
- Determine and assess the following:
    - For ~~r~~Reference ~~p~~Periods when the Fair Allocation Amount is negative, determine whether the forecast cash flow requirements is less than or equal to the financing and operating costs reflected in the Fair Allocation Amount as additional debt of the Trust. If the forecast cash flow requirements exceed the addition to the debt in the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
    - For ~~r~~Reference ~~p~~Periods when the Fair Allocation Amount is positive, determine whether the forecast cash flow requirements is less than or equal to the Fair Allocation Amount. If the forecast cash flow requirements exceed the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
- Due to the timing of the collection of cash flows, the General Regulation contemplates the use of reserve accounts. Provisions for reserves are excluded from the reasonable alignment assessment as these amounts are required to allow the Trust to incur the funding obligations. In addition, the reserve balances will be credited to specified consumers at the end of the term through the true-up mechanism if they are not required to satisfy terms of any funding obligation agreements pursuant to the MTI. Refer to *Financing Reserve and Capital Accounts* for more information on reserve accounts.
- Utilize and apply an accrual methodology when determining costs of the program, except for debt issuance costs, principal repayments, and reserve requirements.

DRAFT

The FSM will establish a methodology for assessing reasonable alignment at such time when a new Fair Allocation Amount letter is received from the MOE.

## B. Principles and Assumptions of the Financing Plan

This section outlines the various principles and assumptions that guided the development of this Financing Plan in accordance with the Act and section 14 of the General Regulation. The same principles and assumptions will apply to all subsequent revisions of the Financing Plan, if required.

The FSM is required to make reasonable assumptions regarding the following matters:

### 1. IESO Deferral for Future Months

The FSM will base its expectation of the IESO deferrals on the most current version of the Fair Allocation Amount and readjustment amounts provided by the MOE. Actual IESO deferrals and forecasts of near term deferrals, if available, will be used to guide forecast deferrals over the next quarter.

### 2. Future Transfers of Portions of the IESO's Regulatory Asset

The Trust anticipates periodic purchases of Investment Assets from the IESO when the cumulative balance of its regulatory assets is large enough to be financed and when effective financing options are available to the Trust. The market capacity for both long-term and short-term debt financing will also be key elements to consider when determining the most cost efficient option.

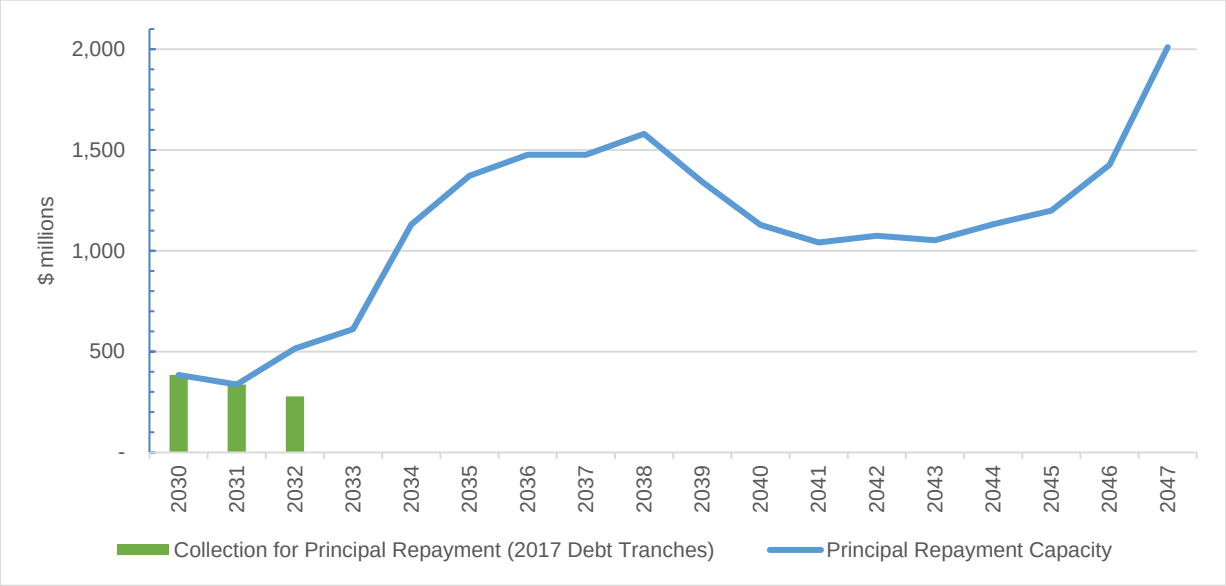
### 3. Term to Maturity of Funding Obligations

Initial Debt Tranche – 2017 Borrowing

The forecast debt profile for the Trust based on the current Fair Allocation Amount received from the Province at the end of September 2017 indicates that principal repayments can commence in 2030 (see Figure 3). However, the principal repayment amount for this year is expected to be relatively small at approximately $400 million for the year or about $200 million for each six-month ~~r~~Reference ~~p~~Period. Accordingly, principal repayment of the 2017 debt tranche is expected to commence in 2032 when the cumulative principal repayment amount reaches approximately $1 billion, which indicates a minimum term for the initial debt issuance of 15 years (i.e. 2017-2032). This offering is expected to include $500 million of senior notes, which is a sizeable amount to ensure sufficient liquidity and marketability. Subsequently, principal repayment increases to approximately $1.5 billion annually or $0.75 billion for each ~~r~~Reference P~~p~~eriod by around 2035 allowing for larger single maturities.

DRAFT

**Figure 3: Principal Repayment Profile Based on Current Fair Allocation Amount**



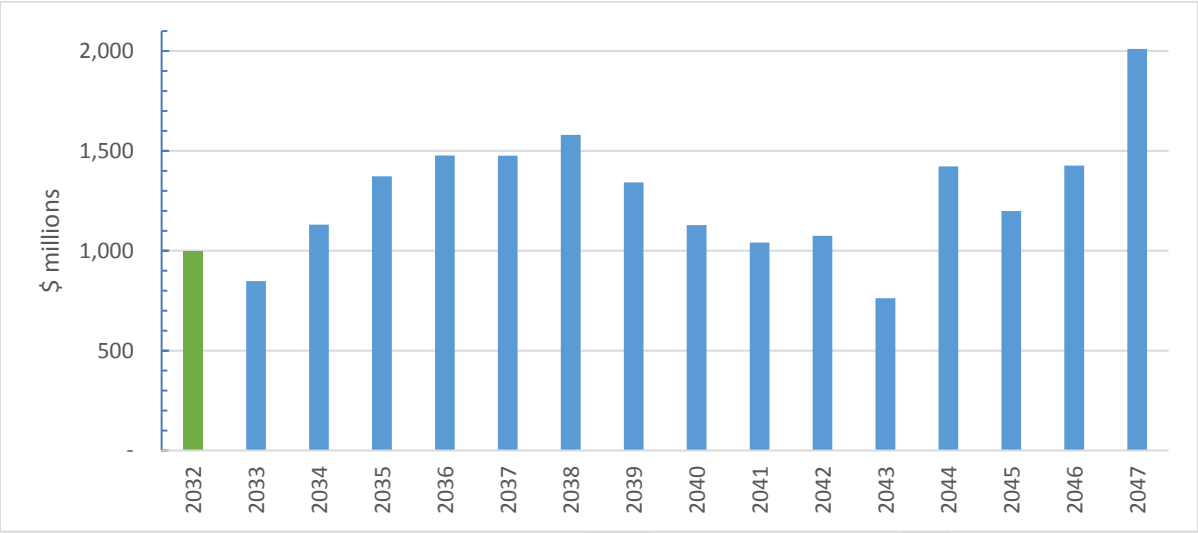

This length of term for an asset-backed security (ABS) has no ~~is un~~precedence ~~ted~~ in the Canadian market where terms are typically 10 years or less. Therefore, it is expected that a higher premium will be required to attract investors. Refer to Table 3 under the heading *Interest Rates* for the indicative current pricing range for all debt tranches, including senior debt.

For a new issuer such as the Trust offering a unique program, a strategy of issuing a 15-year term paper may not provide an optimal initial pricing given the absence of a specific credit curve for the Trust. It is expected that at program inception, the Trust will issue debt to cover both short and long-term exposures. The terms of maturities will be staggered, up to year 30, with maturities capped at the projected Fair Allocation Amount and readjustment amount, during each six-month ~~r~~Reference ~~p~~Period. In addition, consideration for a combination of characteristics established by the Fair Allocation Amount curve and investor interest will drive the term of a funding obligation.

Indicative Debt Maturities for Post-2017 Borrowings

Using the current Fair Allocation Amount, the forecast debt maturities over the life of the FHP Program was derived in Figure 4 for illustrative purposes only and is current as of the date of this Financing Plan. Actual debt maturities may differ materially from what is illustrated in Figure 4 primarily due, but not limited to, future changes in the Fair Allocation Amount.

**Figure 4: Indicative Debt Maturities Using Current Fair Allocation Amount**




The key objective when determining the indicative debt maturities in Figure 4 is to align the annual amount of debt maturities with the principal repayment capacity under the Fair Allocation Amount curve. In years where the principal repayment capacity is less than $500 million, the debt maturities will fall in subsequent years where the cumulative maturities do not exceed the cumulative principal repayment capacity. This type of decision will be made along with other considerations such as size of each issuance to ensure liquidity (and thus, cost efficiency). As this schedule is based on the current Fair Allocation Amount curve and its underlying assumptions, a shift in the curve and/or any changes in the assumptions will result in changes to this indicative debt maturity schedule.

## 4. Refinancing

The MTI requires the Trust to establish and maintain a deposit account in the name of the Indenture Trustee for a refinancing account held for the benefit of the Indenture Trustee and specified creditors. All proceeds arising from notes and borrowings related to refinancing shall be deposited to this refinancing account.

Debt refinancing may occur under the following scenarios:

- When original financing is incurred, the short end of the yield curve is more cost efficient than the long end, on a relative basis;
- The Fair Allocation Amount or readjustment amount is updated; and
- In line with the provisions of the Act, no Clean Energy Adjustments will be collected from specified consumers between July 1, 2017 and April 30, 2021, except in limited circumstances. Accordingly, any debt maturities during this period will need to be refinanced.

Refinancing decisions will be guided by the Trust's ability to secure cost efficient long-term financing from investors and the maximum principal repayment profile dictated by the fair allocation curve.

## 5. Cash Flow Requirements

The Trust's cash flow requirements to meet its contractual obligations include, but are not limited to, the following:

- Payment of taxes, if any
- Reimbursing the FSM for costs and expenditures outlined in sections 10.2 (3) and 10.13 (3) of the General Regulation and summarized under the heading *Fair Hydro Trust Costs and Expenditures*
- Interest and fees on all outstanding borrowings
- Scheduled principal repayments
- Deposits or transfers to reserve accounts required by the MTI and summarized under the heading *Financing Reserve and Capital Accounts*
- OPG's fees as FSM as summarized under the heading *Financial Services Manager's Fees*
- Termination payments to defaulting derivative counterparties, if applicable

Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations* for the cash flow receipts' payment priority.

## 6. Current Funding Options and related Terms and Conditions

To achieve cost efficiencies, the following funding vehicles could be utilized in either the Canadian or US markets (except for the subordinated debt), from time to time, depending on the financing requirement, as well as market capacity and relative pricing at the time of issuance:

- **Short Term**: asset-backed commercial paper (ABCP) conduit and revolving bank lines of credit in the Canadian market
- **Medium to Long-Term**: term ABS and privately placed debt securities in either the Canadian or US markets
- **Subordinated Debt**: to be provided by OPG

<u>Syndicated Short-Term Warehousing Facility</u>

Short-term notes will be issued by the Trust to fund short-term borrowing requirements. The amount outstanding will be periodically refinanced and repaid by long-term funding from the capital markets once the cumulative amount of the Investment Asset available to be purchased is approximately $300 million to $500 million. This warehouse facility is expected to be utilized on a monthly basis to fund the Investment Asset purchases from the IESO.

The Trust has **[**secured a warehouse facility agreement with a bank syndicate comprising of CIBC, RBC, and Goldman Sachs for $800 million under a 2-year committed term, which would be primarily funded through their ABCP conduit**]**.

DRAFT

Revolving Bank Lines of Credit

This type of funding option provides the Trust with a warehouse facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period. This bank funding option will be utilized when it is more cost effective than short-term notes.

Term ABS

ABS are notes that will be backed by the Trust's Investment Asset and issued under the MTI. The specific terms and conditions of each series, class or tranche of notes will be set forth in a supplemental indenture and, if applicable, a terms document authorizing that series, class or tranche.

To minimize financing costs, term ABS bullet bonds will be used rather than amortizing bonds, which require an additional premium by investors. The current intent is to issue term ABS notes in the 15 to 25 year term to fill out the yield curve based on the Fair Allocation Amount and investor demand.

Subordinated Debt

Concurrent with every issuance of senior debt by the Trust, it is expected that OPG will acquire subordinated debt in an amount not to exceed 49 percent of all outstanding debt of the Trust at any time. The subordination of OPG's debt investment plays an important credit enhancement role, which is expected to minimize the cost of senior debt tranches in the external market by garnering a higher rating through some differentiation. The subordinated debt will assume substantially all of the liquidity and deferral risk for the structure. Accordingly, the cash flow payment waterfall in Figure 5 reflects this subordination structure.

The credit rating for the subordinated debt will be dependent on the rating agency assessment and evaluation of the stress credit scenarios. It is expected that there will be a minimum of one rating category differential between each debt tranche.

The interest rate applicable to subordinated debt is expected to be the aggregate of:

- The applicable base rate, which is the relevant senior debt rate, plus
- The applicable spread, which represents the additional interest, in basis points, over the base rate that will apply to the relevant subordinated debt. This rate will be established by OPG through an annual survey of market spreads from a syndicate of banks.

The subordinated debt will maintain a minimum of one rating to allow for appropriate benchmarking/pricing. A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample. The terms of the subordinated debt will be finalized prior to the initial debt issuance.

For the short-term subordinated debt lending facility, the banking syndicate will provide OPG with short-term lending spreads for comparables on committed bank credit facilities on an annual basis (i.e. ratings based on a pricing grid). A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample.

The process will be consistent with the Subordinated Debt Pricing Protocol Agreement between the Trust and the Ontario Financing Authority.

## 7. Currency and Interest Rate Hedging Programs

As the FHP Program develops over time, the Trust will consider interest rate and currency swaps and other hedging instruments, as required. Refer to the Section C, *Risk Mitigation Strategies* for further details on hedging and other instruments that could be used by the Trust.

## 8. Fair Hydro Trust Costs and Expenditures

The costs and expenditures incurred by OPG as FSM on behalf of the Trust will be in accordance with sections 10.2 (3) and 10.13 (3) of the General Regulation as amended in November 2017.

Specifically, the costs and expenditures incurred by the FSM include, but are not limited to, the following:

1. Underwriters or selling agents for funding obligations.
2. Banking fees, including but not limited to structuring fees or work fees.
3. Fees of issuing and paying agents for funding obligations.
4. Fees of trustees.
5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
6. Fees of legal counsel.
7. Rating agency fees.
8. Filing or registration fees.
9. Direct costs of OPG for employees whose work consists exclusively of the provision of services to the Trust in relation to prescribed matters.
10. Costs and expenditures incurred on behalf of any financing entity in connection with OPG's duties under the Act in relation to the financing entity.
11. Costs and expenditures incurred in relation to a management agreement between OPG as FSM and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

The costs and expenditures incurred directly by the Trust, as well as the fees of the FSM and the costs and expenditures incurred by the FSM on behalf of the Trust, are Finance Amounts that can be recovered by the Trust (as carrying costs) from the IESO until July 2021 and thereafter through Clean Energy Adjustments charged to specified consumers.

## 9. Interest Rates

As the FHP Program is expected to last until 2047, it is appropriate to assume that long-term debt rates are the primary components of the financing costs for the overall program. In estimating indicative interest rates for each tranche and debt type, the following key considerations and assumptions were utilized:

- The base case credit rating assumptions are as follows:
    - Target of "AAA" for Tranche A – Senior Debt,

  - "A" for Tranche B – Subordinated Debt which is dependent on the senior debt credit rating, and
  - "BBB" for Tranche C – Junior Subordinated Debt
- Using the projected Province of Ontario long bond rate of 4 percent plus a 25 basis points premium to reflect the securitization structure, the estimated indicative pricing over the life of Tranche A – Senior Debt is 4.25 percent
- For comparative purposes, the current pricing using the Province of Ontario long bond rate of 3.0 percent plus the same 25 basis points premium was included to reflect the current low interest rate environment
- A higher return on the subordinated debt is required to compensate for incremental risks assuming:
  - Rating agencies attribute a lower rating to the subordinated debt relative to the senior debt due to the lower priority in the cash flow waterfall (refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*)
  - Senior debt's rating needs to be credit enhanced to address collection and liquidity risks

To achieve cost efficiencies, the Trust was established with a tiered debt structure to achieve a higher credit rating for the senior debt and to maximize market capacity by accessing the AAA market to achieve cheaper financing costs overall. The following table summarizes the indicative pricing range by debt tranche:

**Table 3: Indicative Pricing by Debt Tranche**

| Tranche and Debt Type | Risk Profile | Source | % of Total Funding Requirement | Rating Category Estimate | Current Pricing | Potential Rating Range | Price Based on Rating Range |
|---|---|---|---|---|---|---|---|
| Tranche A Senior Debt | Lowest Risk | Capital Market | 51% | AAA | 3.25% | AAA – AA | 3.25% – 3.75% |
| Tranche B Subordinated Debt | Medium Risk | OPG via Province | 39% | A | 4.5% | AA – A | 4.0% – 4.5% |
| Tranche C Junior Subordinated Debt | Highest Risk | OPG via Province | 5% | BBB | 5.5% | A – BBB | 5.0% – 5.75% |
| | | OPG via Capital Markets | 5% | | | | |
| **Weighted Average** | | | | | **4.0%** | | **3.75% – 4.5%** |

The credit range for each debt tranche will be determined by the overall credit strength of the financing structure and its resilience under various credit stress scenarios. The rating agencies' assessment of the guarantee to bondholders provided by the Change of Law Protection Agreement, discussed under the heading *Indemnifications*, is one of the major factors that will influence the final ratings of each debt tranche. In addition, in assessing credit stress, the following factors, among others, will be considered: (i) declining energy usage throughout the securitization period, (ii) forecast collections in peak months not materializing, and (iii) declining consumption equal to the largest absolute annual forecast error. The market capacity for

securitization notes is predominantly available for AAA-rated notes, limited for AA-rated notes, and not tested or developed for A-rated or lower. The pricing estimates provided in Table 3 reflect these credit and liquidity factors. Debt pricing will be finalized at the time of the initial issuance.

## 10. Financing Reserve and Capital Accounts

Section 5(1) of the General Regulation stipulates that the Finance Amount shall include any amounts the Trust deposits into capital or finance reserve accounts as required under the governing documents of the funding obligations (i.e. the MTI). The accounts also act as a credit enhancement feature in support of the Trust borrowings. Any unused balance in the segregated trust accounts at the end of the term will be credited to specified consumers. Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*, for the priority order of deposits into the reserve accounts.

The MTI between the Trust and the Indenture Trustee specifies the establishment and maintenance of the following key reserve accounts:

Finance Reserve Accounts

*Program Cash Reserve Account*

The Trust shall establish and maintain a Program Cash Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the specified creditors. Available collections not required to be paid to specified creditors at such time will be credited to a capital reserve account in accordance with the terms of any applicable funding obligation agreement. The funding obligation agreement for a series, class or tranche of funding obligations will specify whether such series, class or tranche has the benefit of a capital reserve account.

*Series Finance Reserve Account*

From time to time, the Trust may establish a Series Finance Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account may be established for the purpose of allowing the Trust to reserve funds to pay finance charges (including, without limitation, interest and payments under derivative agreements) for a series of issuer funding obligations. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

Capital Reserve Account

*Series Capital Reserve Account*

From time to time, the Trust may establish a Series Capital Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This capital reserve account may be established for the sole purpose of allowing the Trust to accumulate funds to be used to make repayments in respect of funding obligations. Details of any period of accumulation and the

amounts to be accumulated shall be specified in the related funding obligation agreement. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

## 11. Indemnifications

The following forms of indemnities are expected to be issued for the FHP Program:

Change of Law Protection Agreement **[MONITOR]**

The Change of Law Protection Agreement provides bondholders a guarantee in the event of a protection event and acts as a credit enhancement for the Trust's senior debt. The guarantee will be triggered if~~when~~:

i. the Province changes the Fair Hydro legislation/regulations or passes other legislation/regulation that materially adversely affects the ability of the Trust to service interest or principal payments on its debt, or

ii. the Act is declared invalid/unconstitutional.

Upon a protection event, the Province is required to either, at its election: (i) pay the specified claims consisting of all Finance Amounts, excluding ■ **[update],** owing by the Trust as they become due and payable, or (ii) assume the Trust's obligations as primary obligor, **[**in each case**]**, without acceleration of the specified claims.

Issuer Trustee

Each of the Issuer Trustee and its related parties will be indemnified out of the trust property from and against all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, investigations, proceedings, costs, expenses or disbursements of any kind arising out of, among other things, the declaration of trust or any other program agreement, the administration of the Trust's assets or the action or inaction of the Issuer Trustee's agents, except for its own fraud, willful misconduct, bad faith or negligence.

Limited Recourse

The obligation of the Trust to pay principal and interest on the funding obligations is subject to the allocation and payment provisions in the MTI and the applicable funding obligation agreement and limited to amounts available from the collateral. Neither the Indenture Trustee, OPG nor the Issuer Trustee in its individual capacity will be personally liable for the payment of the principal or interest on the notes or any other funding obligation, or for the Trust's covenants and agreements contained in the MTI.

## 12. Financial Services Manager's Fees

All fees charged by OPG to the Trust will be in accordance with the provisions of the General Regulation.

Subject to OEB approval, OPG is entitled to the following:

- For 2017, OPG will receive $3.1 million and an amount to cover up-front costs incurred between June 1 and December 31, 2017 by OPG on behalf of the Trust (e.g. legal fees, rating agency fees, trustee fees). The $3.1 million includes a $600,000 fee and $2.5 million to cover costs incurred prior to June 1, 2017. The expenses between June 1 and December 31, 2017 will also include direct costs of OPG employees who are dedicated exclusively to Fair Hydro matters.
- For January 2018 to March 2019, OPG will receive (i) a base fee equal to 7.5 basis points, divided by 12, multiplied by ~~times~~ the average monthly outstanding debt of the Trust, (ii) a variable fee that is calculated based on how the interest rate for external funding tranches for that period compare to forecast interest rates for the period (and which fee is limited to ± 2% of 5% of the total external funding tranches issued in the period), and (iii) third-party expenses and direct employee costs of dedicated Fair Hydro employees.
- For April 2019 to March 2020, and every 12 month period thereafter, OPG will make submissions to the OEB on the base fee, variable fee and expenses. The base fee will be based on comparable fees charged by full-service managers of securitization vehicles (and other similar funds). The variable fee will be calculated in the same manner noted above, but with a refresh of forecast interest rates for the relevant period. For 2019 onward, the expenses will include direct employee costs of dedicated Fair Hydro employees only if the fees of comparable managers also include such direct costs.

A written confirmation from OPG's external auditor or another external auditor is required to accompany each submission to the OEB for the recovery of expenditures incurred by OPG on behalf of the Trust. The report shall confirm the accuracy of the costs and expenditures charged to the Trust, that such amounts were incurred by OPG, and the amounts were paid to third parties (with the exception of direct employee costs).

## C. Other Considerations

### 1. Market

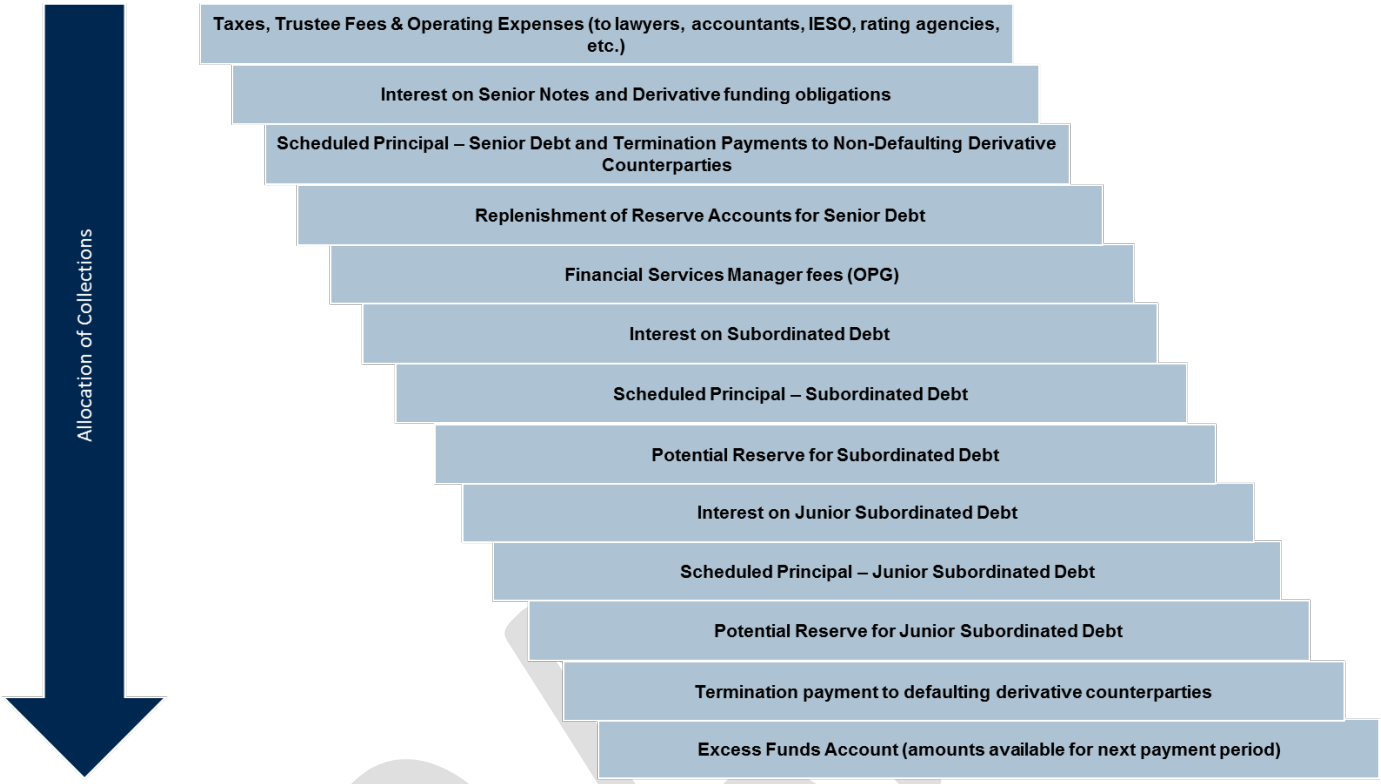
The FHP Program's financing platform was developed to allow for access to both the Canadian and US markets in order to have the best pricing and flexibility options. To the extent that the Canadian market has sufficient capacity and provides cost efficiency, priority will be given to the domestic market. However, there is no precedence in the Canadian market for term ABS notes longer than 10 years, nor the size of funding required by the FHP Program. Due to this, the ability to access the US market provides the program additional financing capacity in the event that the Canadian market cannot support the financing requirement. The FSM will make its decision on which market to access on a deal-by-deal basis.

For the initial debt issuance in 2017, it is anticipated that a term ABS funding will be sourced from the Canadian market as it is expected to be more cost efficient given current market conditions.

### 2. Application of Recovery Amounts to Funding Obligations

The MTI outlines the payment priorities for the Trust's receipt of cash flows. Figure 5 below summarizes the significant components of the waterfall.

**Figure 5: Waterfall for Fair Hydro Trust Cash Collection**




Payment Priorities

On each payment date, all amounts on deposit in the collection account will be paid out in the following order of priority:

1. to pay (A) all taxes exigible for which a governmental authority is given priority over the specified creditors under the laws of the applicable jurisdiction, and then (B) fees, expenses and reimbursements owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount of ■ percent[1] of the outstanding principal amount of all funding obligations at such time;
2. to pay (A) interest, fees and other amounts owing in respect of senior debt and (B) amounts payable to derivative counterparties other than termination payments;
3. to pay (A) principal owing in respect of senior debt to the extent required to satisfy any payment of principal; and (B) termination payments owing to derivative counterparties where the derivative counterparty is not the defaulting party or the sole affected party;
4. to deposit or transfer to any reserve account in respect of senior debt, the amount required pursuant to the applicable funding obligation agreement;
5. to pay fees, expenses, reimbursement and indemnity amounts owing to OPG;
6. to pay interest, fees and other amounts owing in respect of subordinated debt;

[1] To be confirmed.

7. to pay principal owing in respect of subordinated debt to the extent required to satisfy any payment of principal;
8. to deposit or transfer to any reserve account related solely to subordinated debt the amount required pursuant to the applicable funding obligation agreement;
9. to pay interest, fees and other amounts owing in respect of junior subordinated debt;
10. to pay principal owing in respect of junior subordinated debt to the extent required to satisfy any payment of principal;
11. to deposit or transfer to any reserve account related solely to junior subordinated debt the amount required pursuant to the applicable funding obligation agreement;
12. to pay termination payments owing to derivative counterparties where the derivative counterparty is the defaulting party or the sole affected party; and
13. to be held in the collection account for distribution in the above order of priority on the next payment date; or (ii) after all funding obligations have been paid and discharged, and all other amounts have been paid in full, to pay to the Trust.

## 3. Risk Mitigation Strategies

Currency Risk

If the Canadian market cannot support the financing capacity of the FHP Program in the future and/or it is less cost efficient than the US market at the time of each subsequent debt issuance, the Trust will access the US market for long term financing.

Under this scenario, hedges will be considered to mitigate currency exposure. For the initial debt issuance in 2017, it is anticipated that funding will be sourced from the Canadian market only as it is expected to be more cost efficient and there is sufficient market capacity.

Interest Rate and Refinancing Risk

The FHP Program is expected to span over a 30-year period until 2047 with various series of notes expected to be issued at various maturity dates. Given the long-term timeline of the program, it is subject to interest rate and refinancing risk.

Interest rate hedges, including bond forwards and/or forward start interest rate swaps, will be considered in the future to mitigate potential interest rate risk and/or refinancing risk in a cost-efficient manner.

## 4. Tax Minimization Strategies

Beneficiary – FHP2017 Inc.

The majority unitholder and beneficiary of the Trust is exempt from federal tax under section 149 of the *Income Tax Act, Canada* and from Ontario tax under section 27 of the *Ontario Taxation Act, 2007*.

The beneficiary is subject to payments in lieu of federal and provincial income taxes (PILs). In order to minimize the tax associated with the Fair Hydro Plan, an exemption from PILs payable

on income from the Trust was secured for the beneficiary **[MONITOR]**. This will result in a reduction in the income tax costs related to the Financing Plan.

Fair Hydro Trust

Trust income will be fully distributed to unitholders to ensure that there is no tax payable by the Trust.

## D. Execution Plan for the Inaugural Debt Issuance

It is anticipated that the first term ABS notes will be issued in the 1st or 2nd week of December 2017 to purchase the accumulated regulatory assets from the IESO, expected to be approximately $1 billion at that time. Accordingly, the expected size of the senior debt tranche is approximately $500 million representing the 51 percent funding structure allocation from capital markets. In the event the term markets do not have sufficient capacity for the full required funding of $500 million, the warehouse facility will be utilized. OPG will purchase subordinated and junior subordinated debt issued by the Trust for approximately $500 million representing the remaining 49 percent of the total funding requirement.

Key Activities

The following table outlines the key activities required to execute the first purchase of the Investment Asset:

| Activity | 2017 Timeline |
|---|---|
| Rating Agencies' Assessment | End of November |
| Marketing & Roadshow | Last week of November – 1st week of December |
| Term Debt Closing & Funding | 1st – 2nd week of December |
| Warehouse Facility Closing & Funding | 2nd week of December |

DRAFT

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Subject:** | FW: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:41:01 AM |
| **Importance:** | High |

---

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Monday, September 25, 2017 11:29 AM

**To:** Pratima Gounden (ENERGY) ; Long, Anne-Marie (MOF) ; Anna Strathy

**Cc:** Afshin Malekzadeh (MOHLTC) ; Chris Skubel (MGS)

**Subject:** FHP Item may go earlier than 3:20pm

**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm.
However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

**From:** Hanslep, Malle (MOF)
**To:** Ken Kandeepan; Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** FW: FHP Regulation
**Date:** Thursday, November 16, 2017 8:55:50 AM
**Attachments:** 170206_e.doc

---

Please see s. 14 of this regulation which summarizes expected content of financing plan.

# Ontario Fair Hydro Plan Act, 2017
# Loi de 2017 sur le Plan ontarien pour des frais d'électricité équitables

## ONTARIO REGULATION 206/17
## GENERAL

**Consolidation Period:** From November 3, 2017 to the e-Laws currency date.

Last amendment: 415/17.

Legislative History: 415/17.

***This Regulation is made in English only.***

**CONTENTS**


DEFINITIONS

1. Definitions
2. Funding obligation
3. Refinancing

CLEAN ENERGY ADJUSTMENT

4. Unit sub-metering, collection
5. Determining the finance amount
6. Determining true up amount
7. Notification to Board
8. Board to determine rates
9. IESO to receive, remit amounts
9.1 IESO to pay, remit amounts re carrying costs of financing entity
10. Electricity vendors to invoice, collect

FINANCIAL SERVICES MANAGER - FEES

10.1 Fees that may be established, charged
10.2 Submission re general fee for 2017
10.3 Board review of general fee for 2017
10.4 Charging of general fee for 2017
10.5 Submission re general fee for January 1, 2018 to March 31, 2019
10.6 Board review of general fee
10.7 Charging of general fee
10.8 Submission re base and variable fees for 2019-2020, subsequent years
10.9 Base fee
10.10 Variable fee
10.11 In-year amendments to base fee or variable fee
10.12 Charging of base and variable fees
10.13 Fees for costs and expenditures, submission to Board
10.14 Board review of fee for costs, expenditures
10.15 Charging of fee for costs, expenditures

FAIR ALLOCATION AMOUNT

11. Prescribed period, amount
12. Determination of estimated financing costs
13. Minister's considerations

FINANCING PLAN

14. Principles and assumptions

THE REGULATORY ASSET

15. Determination of IESO deferral
16. Adjustments that may be recorded by the IESO

MISCELLANEOUS

17. Investment asset
18. Appointment of agent, invoicing or collection
19. Disclosure in marketing materials, offering documents, etc.

## DEFINITIONS

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (3);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

"derivative agreement" means any derivative agreement, including interest rate swaps and cross-currency swaps and any associated collateral, entered into in connection with or to hedge the exposure of a financing entity under a funding obligation;

"derivative payment" means any payment required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

"finance reserve account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of funding obligations and other finance amounts or for related contingencies;

"financing entity expense" includes,

(a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and

(b) any taxes on amounts mentioned in clause (a);

"funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment;

"funding tranche" means an issuance of funding obligations of a particular class or type, all of which have the same terms, but does not include an issuance of a funding obligation to the Financial Services Manager;

"governing documents" means, in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation;

"market comparable fees" means fees, expressed as an annual percentage rate, charged by full-service managers of funds, including but not limited to securitization vehicles, pension funds and other investment funds, hedge funds or other similar funds, for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

(a) the type of services provided,

(b) the scope of services provided,

(c) the level of services provided, and

(d) the dollar amount of assets under management;

"market comparable forecast interest rates" means, in relation to a funding tranche, interest rates for a debt obligation that,

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche,

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

"maturity date" means, in respect of a funding obligation, the date set out in the governing documents of the funding obligation on which all outstanding principal, interest and other amounts outstanding are due and payable;

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing;

"prescribed matters" means matters in relation to the establishment, management and administration of financing entities and the investment asset, including but not limited to matters in relation to,

(a) financing entities that are established or that are planned to be established, and

(b) funding obligations that have been incurred or that are planned to be incurred by financing entities;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations;

"redemption amount" means the amount payable by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase;

"refinancing amount" means the principal amount of a funding obligation incurred by a financing entity in respect of a refinancing;

"repayment" means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation;

"tax" means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory and includes,

(a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge,

(i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use, or

(ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, *ad valorem* tax, franchise tax, transfer tax, withholding tax, property tax, surtax, payroll tax, employment tax or employer health tax,

(b) government pension plan premiums or contributions, social security premiums, workers' compensation premiums and employment or unemployment insurance or compensation premiums and contributions,

(c) an amount or charge under Part VI of the Electricity Act, 1998,

(d) an instalment in respect of an amount mentioned in clauses (a) to (c), and

(e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c);

"tax liability" means all tax paid or payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the Act;

"tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the Act. O. Reg. 415/17, s. 1 (1).

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a determination of the Board under Part II of the Act.

2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

(3) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) \div 2$$

where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities. O. Reg. 415/17, s. 1 (2).

**Funding obligation**

**2.** (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

1. A refinancing.
2. A derivative payment.
3. An amount raised for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.

(2) Funding obligations include principal, interest, fees and other amounts owing in respect of the funding obligations.

**Refinancing**

**3.** (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.
2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.
3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

## CLEAN ENERGY ADJUSTMENT

**Unit sub-metering, collection**

**4.** For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.
2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer, the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

**Determining the finance amount**

**5.** (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:
    i. Amounts paid or payable during the period in respect of repayments.
    ii. Funding costs paid or payable during the period.
    iii. Redemption amounts paid or payable during the period.
    iv. Derivative payments required to be made during the period.
    v. Amounts deposited, as required under the governing documents of funding obligations, into capital accounts or finance reserve accounts during the period.
    vi. Financing entity expenses paid or payable during the period.
    vii. Tax liabilities payable during the period.
    viii. Amounts paid or payable by or on behalf of a financing entity during the period to any guarantor or surety that made a payment of an amount due and payable under a funding obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5 (2) or (3) of the Act.
2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:
    i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period.
    ii. Amounts received during the period in respect of funding rebates and carrying costs.
    iii. Recovery amounts received during the period.

iv. Refinancing amounts that are applied to repayments during the period.

v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.

vi. Tax refunds received during the period.

3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1. O. Reg. 415/17, s. 2.

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

1. The determination shall be made by applying a cash basis accounting method.

2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received, applied, withdrawn or made available during that period of time.

3. If the determination is in respect of a future period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received, applied, withdrawn or made available during that period of time.

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash amounts.

(3) Despite subsection (2), taxes may be estimated in respect of a particular tax reporting period of a financing entity and allocated in respect of various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, shall be deemed to be a tax refund received by the financing entity during the period of time described in subsection (4).

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period, as determined without taking into account paragraph 1, exceeds the estimated taxes shall be deemed to be a tax liability payable by the financing entity during the period of time described in subsection (4).

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply:

i. The assessed or reassessed amount shall be deemed to be a tax liability payable by the financing entity during the first period of time, commencing after the date of the assessment or reassessment, in respect of which the finance amount is determined.

ii. Any interest charged on the assessed or reassessed amount following the date of the assessment or reassessment shall be deemed to be a tax liability payable by the financing entity as the interest is paid or accrues.

iii. Once there has been a final determination with respect to the tax liability payable by the financing entity in respect of the particular tax reporting period, the amount, if any, by which the tax liability payable by the financing entity during the tax reporting period is decreased from the assessed or reassessed amount, together with the after-tax amount of any refund interest received by the financing entity, shall be deemed to be a tax refund received by the financing entity during the first period of time, commencing after the final determination, in respect of which the finance amount is determined.

(4) For the purposes of paragraphs 2 and 3 of subsection (3), the period of time is the first period of time, commencing after the filing of the tax return with the applicable governmental authority for the particular tax reporting period, in respect of which the finance amount is determined.

(5) For the purposes of subparagraph 4 iii of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

**Determining true up amount**

**6.** (1) Unless all funding obligations and other finance amounts are paid in full, the Financial Services Manager shall calculate the true up amount in respect of each reference period.

(2) The Financial Services Manager may, at any time during a reference period, determine the true up amount in respect of the remaining portion of the reference period if,

(a) all funding obligations and other finance amounts have not been paid in full;

(b) the Board has made a determination under subsection 15 (4) of the Act in respect of the reference period; and

(c) the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a reference period.

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows:

$$T = (A - B) + C$$

where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

(4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (3), have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true up amount.

**Notification to Board**

**7.** (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all funding obligations and other finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

(a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

(b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all funding obligations and other finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (3), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager makes a determination of the true up amount under subsection 6 (2) in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of the remaining months in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination as soon as possible.

**Board to determine rates**

**8.** (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.

(2) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecast electricity consumption of specified consumers in respect of the period.

(3) For the purposes of subsection (2), the forecast electricity consumption of specified consumers shall be based on forecast information provided to the Board by the IESO.

(4) If notice is provided under subsection 7 (2) or (5), the rates shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(5) If notice of a redetermination is provided under subsection 7 (6), the rates shall be determined by the Board so that they take effect,

(a) if the notice was provided before the 15th day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the 15th day in a month, on the first day of the second month following the month in which the notice was provided.

**IESO to receive, remit amounts**

**9.** (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts to the financing entities within a reasonable period of time.

**IESO to pay, remit amounts re carrying costs of financing entity**

**9.1** (1) During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021. O. Reg. 415/17, s. 3.

(2) For the purposes of determining the amounts to be paid and remitted under subsection (1), the IESO may rely on information provided by a financing entity with respect to the amounts. O. Reg. 415/17, s. 3.

(3) The carrying costs of a financing entity for a period of time shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:
    i. Funding costs paid or payable during the period.
    ii. Derivative payments required to be made during the period.
    iii. Amounts deposited, as required under the governing documents of funding obligations, into accounts other than capital accounts during the period.
    iv. Financing entity expenses paid or payable during the period.
    v. Tax liabilities payable during the period.
2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:
    i. Amounts withdrawn, as permitted under the governing documents of funding obligations, from accounts other than capital accounts during the period.
    ii. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.
    iii. Tax refunds received during the period.
3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1. O. Reg. 415/17, s. 3.

(4) The determination of the carrying costs of a financing entity for a period of time shall be made on an accrual basis accounting method. O. Reg. 415/17, s. 3.

(5) The IESO may grant security to a financing entity in order to secure its obligations to pay and remit present and future amounts due under this section. O. Reg. 415/17, s. 3.

**Electricity vendors to invoice, collect**

**10.** (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are deposited into a segregated account established for the purpose of receiving those amounts exclusively.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

(4) Subject to any requirement to the contrary under any Act or regulation, each electricity vendor shall make the records mentioned in subsection (3) available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

**Fees that may be established, charged**

**10.1** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to prescribed matters. O. Reg. 415/17, s. 4.

(2) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation. O. Reg. 415/17, s. 4.

**Submission re general fee for 2017**

**10.2** (1) The Financial Services Manager shall submit to the Board, on or before February 28, 2018, the proposed fee for the period beginning on June 1, 2017 and ending on December 31, 2017. O. Reg. 415/17, s. 4.

(2) The proposed fee shall be the sum of the following:

1. $3.1 million, reflecting the amount of return payable on services provided by the Financial Services Manager in relation to prescribed matters during the period mentioned in subsection (1).
2. The amount of any costs and expenditures incurred by the Financial Services Manager in relation to prescribed matters during the period mentioned in subsection (1) and paid during the period mentioned in subsection (1). O. Reg. 415/17, s. 4.

(3) The costs and expenditures referred to in subsection (2) include, but are not limited to, costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.
2. Banking fees, including but not limited to structuring fees or work fees.
3. Fees of issuing and paying agents for funding obligations.
4. Fees of trustees.
5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
6. Fees of legal counsel.
7. Rating agency fees.
8. Filing or registration fees.
9. Direct costs of the Financial Services Manager for employees whose work for the Financial Services Manager consists exclusively of the provision of services to financing entities in relation to prescribed matters.
10. Costs and expenditures incurred on behalf of any financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity.
11. Costs and expenditures incurred in relation to a management agreement between the Financial Services Manager and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures. O. Reg. 415/17, s. 4.

(4) The submission shall include written confirmation from the Financial Services Manager's external auditor or another external auditor of the following:

1. That the amounts of the costs and expenditures that the Financial Services Manager seeks to recover through fees, as set out in the submission, are accurate.
2. That the amounts of the costs and expenditures, as set out in the submission, were incurred by the Financial Services Manager.
3. That, except in the case of amounts referred to in paragraph 9 of subsection (3), the amounts were paid to third parties. O. Reg. 415/17, s. 4.

**Board review of general fee for 2017**

**10.3** (1) The Board may,

(a) subject to subsection (2), approve or refuse to approve the amount referred to in paragraph 1 of subsection 10.2 (2); and

(b) subject to subsection (3), approve or refuse to approve a portion of the amount referred to in paragraph 2 of subsection 10.2 (2). O. Reg. 415/17, s. 4.

(2) For the purposes of clause (1) (a), the Board shall approve the amount if the Board is of the view that both of the following conditions are met:

1. Any financing entities were established during the period mentioned in subsection 10.2 (1).

2. Any funding obligations were incurred during the period or work was substantially completed during the period mentioned in subsection 10.2 (1) in order for funding obligations to be incurred after the end of the period mentioned in subsection 10.2 (1). O. Reg. 415/17, s. 4.

(3) For the purposes of clause (1) (b), the Board may refuse to approve an amount of a cost or expenditure if the Board is of the view that the cost or expenditure was not incurred by the Financial Services Manager in relation to prescribed matters during the period mentioned in subsection 10.2 (1) or that the cost or expenditure was not paid by the Financial Services Manager during the period mentioned in subsection 10.2 (1). O. Reg. 415/17, s. 4.

**Charging of general fee for 2017**

**10.4** (1) If the Board approves a fee under section 10.3, the fee is payable no later than 30 days following the last day of the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(2) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager. O. Reg. 415/17, s. 4.

**Submission re general fee for January 1, 2018 to March 31, 2019**

**10.5** (1) The Financial Services Manager shall submit to the Board, on or before December 15, 2017, the proposed fee for the period beginning on January 1, 2018 and ending on March 31, 2019. O. Reg. 415/17, s. 4.

(2) The Financial Services Manager shall establish the proposed fee for the period mentioned in subsection (1) as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing:

$$(A \times (B - C)) \times 0.10$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

3. If the result calculated under paragraph 2 is greater than the following, decrease the result to the following: the amount that is 2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing.

4. If the result calculated under paragraph 2 is less than the following amount, increase the result to the following: the amount that is -2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing.

5. Calculate the amount that is 0.00625 per cent of the average monthly funding obligation for each month in the period mentioned in subsection (1).

6. Calculate the sum of the amount determined under paragraph 2 after applying paragraph 3 or 4, as the case may be, and all of the amounts calculated for months under paragraph 5. O. Reg. 415/17, s. 4.

(3) If, subsequent to the initial submission to the Board under subsection (1), the Financial Services Manager determines that a funding tranche may be issued that was not contemplated in the initial submission, the following rules apply:

1. If the Board has not approved the proposed fee, the Financial Services Manager may notify the Board of the funding tranche and, on a day that is later than December 15, 2017 but before such day as may be specified by the Board, submit an amendment to the submission that sets out a forecast interest rate for that funding tranche.

2. If the Board has approved the proposed fee, the Financial Services Manager may notify the Board of the funding tranche and, before such day as may be specified by the Board, submit to the Board a forecast interest rate for that funding tranche as part of a proposal to amend the fee to include that funding tranche. O. Reg. 415/17, s. 4.

(4) A proposal to amend a fee under paragraph 2 of subsection (3) shall be deemed, for the purpose of the Board's review of the proposal, to be a new proposed fee under this section. O. Reg. 415/17, s. 4.

**Board review of general fee**

**10.6** (1) The Board may,

(a) approve the fee proposed under section 10.5; or

(b) refuse to approve the fee if the Board is of the view that any forecast interest rate used for the purposes of paragraph 1 of subsection 10.5 (2) is materially inconsistent with market comparable forecast interest rates. O. Reg. 415/17, s. 4.

(2) If the Board refuses to approve the proposed fee,

(a) the Board may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was materially inconsistent with market comparable forecast interest rates; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with market comparable forecast interest rates. O. Reg. 415/17, s. 4.

(3) If the Financial Services Manager submits a revised proposed fee, this section applies, with necessary modifications, to the submission as if it were the initial submission. O. Reg. 415/17, s. 4.

**Charging of general fee**

**10.7** (1) If the Board approves a fee under section 10.6,

(a) subject to subsection (2), each monthly amount determined under paragraph 5 of subsection 10.5 (2) is payable no later than the last day of the month following the month in respect of which the amount was determined; and

(b) all other amounts are payable no later than 30 days following the later of March 31, 2019 and the last day of the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(2) If the Board approves a fee under section 10.6 after January 1, 2018, each of the monthly amounts referred to in clause (1) (a) is payable no later than the later of,

(a) the last day of the month following the month in respect of which the amount was determined; and

(b) the last day of the month following the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(3) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager. O. Reg. 415/17, s. 4.

**Submission re base and variable fees for 2019-2020, subsequent years**

**10.8** (1) The Financial Services Manager shall submit to the Board, on or before February 28, 2019 and on or before February 28 in each subsequent year, the proposed base fee and variable fee for the period beginning on April 1 in the year of the submission and ending on March 31 in the following year. O. Reg. 415/17, s. 4.

(2) In this section and sections 10.9 to 10.12, a reference to a year means the 12-month period beginning on April 1 and ending on the following March 31. O. Reg. 415/17, s. 4.

**Base fee**

**10.9** (1) The Financial Services Manager shall establish a proposed base fee mentioned in subsection 10.8 (1) for each month in a year by determining the amount that it considers to be consistent with market comparable fees, expressed as a percentage of the average monthly funding obligation for the preceding month. O. Reg. 415/17, s. 4.

(2) The Financial Services Manager shall determine the amount that it considers to be consistent with market comparable fees by applying the following rules:

1. Subject to paragraph 2, the Financial Services Manager shall determine the average of at least five fees that satisfy the definition of "market comparable fees" in subsection 1 (1).

2. If the Financial Services Manager is not able to determine the average of at least five fees for the purposes of paragraph 1, the Financial Services Manager shall determine the average of as many fees as possible.

3. Subject to paragraph 4, the Financial Services Manager shall ensure that at least 80 per cent of the fees included in the average are fees charged by full-service managers of securitization vehicles.

4. If the Financial Services Manager is not able to ensure that at least 80 per cent of the fees meet the description set out in paragraph 3, the Financial Services Manager shall ensure that the highest percentage possible of the fees included in the average meets that description. O. Reg. 415/17, s. 4.

(3) The Financial Services Manager shall use, for the purposes of making the determination under subsection (2), fees charged in Canada by full-service managers who are in Canada. O. Reg. 415/17, s. 4.

(4) Despite subsection (3), the Financial Services Manager may use the following fees if the Board consents to the use of such fees:

1. Fees charged in a North American jurisdiction other than Canada by full-service managers who are in Canada.

2. Fees charged by full-service managers who are in a North American jurisdiction other than Canada. O. Reg. 415/17, s. 4.

(5) The Board may,

(a) approve the proposed base fee; or

(b) subject to subsection (6), refuse to approve the proposed base fee if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees. O. Reg. 415/17, s. 4.

(6) When determining whether the proposed base fee is materially inconsistent with market comparable fees, the Board shall apply the rules set out in subsection (2) and may use market comparable fees other than those used by the Financial Services Manager for the purposes of that subsection including any fees that meet the description set out in paragraph 1 or 2 of subsection (4). O. Reg. 415/17, s. 4.

(7) If the Board refuses to approve a proposed base fee,

(a) the Board may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including but not limited to details concerning the market comparable fees that the Financial Services Manager considered. O. Reg. 415/17, s. 4.

(8) If the Financial Services Manager submits a revised proposed base fee, this section applies, with necessary modifications, to the submission as if it were the initial submission. O. Reg. 415/17, s. 4.

(9) If the Board has not approved a proposed base fee by the first day of the year for which the proposed base fee would be charged,

(a) the Financial Services Manager may continue to charge the base fee that was most recently approved by the Board, if any base fee was previously approved; and

(b) the Financial Services Manager shall adjust the base fee in the month following the month in which the Board approves the proposed base fee, to reflect the difference between the base fee charged for the year to date and the base fee approved by the Board for the year to date. O. Reg. 415/17, s. 4.

**Variable fee**

**10.10** (1) The Financial Services Manager shall establish a variable fee mentioned in subsection 10.8 (1) for a year as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.10$$

where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

3. If the result calculated under paragraph 2 is greater than the following, decrease the result to the following: the amount that is 2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing.

4. If the result calculated under paragraph 2 is less than the following amount, increase the result to the following: the amount that is -2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing. O. Reg. 415/17, s. 4.

(2) The Board may,

(a) approve the proposed variable fee; or

(b) refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of subsection (1) is materially inconsistent with market comparable forecast interest rates. O. Reg. 415/17, s. 4.

(3) If the Board refuses to approve the proposed variable fee,

(a) the Board may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was materially inconsistent with market comparable forecast interest rates; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with market comparable forecast interest rates. O. Reg. 415/17, s. 4.

(4) If, subsequent to the initial submission to the Board under subsection (1), the Financial Services Manager determines that a funding tranche may be issued that was not contemplated in the initial submission, the following rules apply:

1. If the Board has not approved the proposed fee, the Financial Services Manager may notify the Board of the funding tranche and, on a day that is later than February 28 but before such day as may be specified by the Board, submit an amendment to the submission that sets out a forecast interest rate for that funding tranche.

2. If the Board has approved the proposed fee, the Financial Services Manager may notify the Board of the funding tranche and, before such day as may be specified by the Board, submit to the Board a forecast interest rate for that funding tranche as part of a proposal to amend the fee to include that funding tranche. O. Reg. 415/17, s. 4.

(5) A proposal to amend a fee under paragraph 2 of subsection (4) shall be deemed, for the purpose of the Board's review of the proposal, to be a new proposed fee under this section. O. Reg. 415/17, s. 4.

**In-year amendments to base fee or variable fee**

**10.11** (1) The Financial Services Manager may, no more frequently than once in any consecutive twelve-month period, make submissions to the Board to amend any fees approved by the Board under section 10.9 or 10.10, and section 10.9 or 10.10 applies, as the case may be and with necessary modifications, in respect of the submissions. O. Reg. 415/17, s. 4.

(2) Nothing in subsection (1) authorizes an amendment to a fee that would result in the fee failing to meet the criteria for approval set out in section 10.9 or 10.10, as the case may be. O. Reg. 415/17, s. 4.

**Charging of base and variable fees**

**10.12** (1) If the Board approves a fee under section 10.9 or 10.10,

(a) in the case of a base fee, subject to subsection (2), the fee is payable no later than 30 days after the end of the month for which the fee is payable; and

(b) in the case of a variable fee for a year, the fee is payable on the later of,

(i) June 30 in the following year, or

(ii) the last day of the third month following the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(2) If the Board approves a fee under section 10.9 after March 31, 2019, each of the monthly amounts referred to in clause (1) (a) is payable no later than the later of,

(a) the last day of the month following the month in respect of which the amount was determined; and

(b) the last day of the month following the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(3) If the variable fee for a year is a negative amount, it shall be deducted from the first payments of base fees payable in the following year until the amount has been fully deducted. O. Reg. 415/17, s. 4.

(4) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on,

(a) in the case of a base fee, the financing entity's proportionate share of the average principal amount of funding obligations for the applicable period; and

(b) in the case of a variable fee, the portion of the variable fee attributable to the funding tranches issued by the financing entity. O. Reg. 415/17, s. 4.

(5) If the Board approves an amendment to a fee under section 10.11, the fee as amended may be charged,

(a) in the case of a base fee, starting in the month following the month in which the Board's approval is given; and

(b) in the case of a variable fee, in respect of funding tranches issued starting in the month following the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

**Fees for costs and expenditures, submission to Board**

**10.13** (1) The Financial Services Manager shall submit to the Board a proposed fee for costs and expenditures,

(a) no later than February 28, 2019, in respect of costs and expenditures paid during 2018; and

(b) no later than February 28 in each subsequent year, in respect of costs and expenditures paid during the previous calendar year. O. Reg. 415/17, s. 4.

(2) The fee may be established to recover the amount of costs and expenditures incurred by the Financial Services Manager in relation to prescribed matters. O. Reg. 415/17, s. 4.

(3) The costs and expenditures referred to in subsection (2) include but are not limited to costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.
2. Banking fees, including but not limited to structuring fees or work fees.
3. Fees of issuing and paying agents for funding obligations.
4. Fees of trustees.
5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
6. Fees of legal counsel.
7. Rating agency fees.
8. Filing or registration fees.
9. Subject to subsection (4), direct costs of the Financial Services Manager for employees whose work for the Financial Services Manager consists exclusively of the provision of services to financing entities in relation to prescribed matters.
10. Costs and expenditures incurred on behalf of any financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity.
11. Costs and expenditures incurred in relation to a management agreement between the Financial Services Manager and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures. O. Reg. 415/17, s. 4.

(4) If the costs referred to in paragraph 9 of subsection (3) are paid after March 31, 2019, they are recoverable for a year only if the Board, upon reviewing the submission, makes the following determination:

1. A majority of the market comparable fees used by the Board for the purposes of subsection 10.9 (3) for a fiscal year that begins in the calendar year to which the submission under this section relates are charged by full-service managers of funds who, in addition to charging those fees, also recover costs that are materially consistent with and similar to the costs referred to in paragraph 9 of subsection (3) that are paid after March 31, 2019. O. Reg. 415/17, s. 4.

(5) For the purposes of subsection (4), the Board shall consider whether the costs paid after March 31, 2019 are incurred in relation to the establishment, management and administration of the funds to which the market comparable fees relate. O. Reg. 415/17, s. 4.

(6) For the purposes of subsection (4), a fiscal year begins on April 1 in a year and ends on March 31 in the following year. O. Reg. 415/17, s. 4.

(7) The submission shall include written confirmation from the Financial Services Manager's external auditor or another external auditor of the following:

1. That the amounts of the costs and expenditures that the Financial Services Manager seeks to recover through fees, as set out in the submission, are accurate.
2. That the amounts of the costs and expenditures, as set out in the submission, were incurred by the Financial Services Manager.
3. That, except in the case of amounts referred to in paragraph 9 of subsection (3), the amounts were paid to third parties. O. Reg. 415/17, s. 4.

**Board review of fee for costs, expenditures**

**10.14** (1) The Board may,

(a) approve the fee proposed under section 10.13; or

(b) subject to subsection (2), refuse to approve a portion of the amount included in the proposed fee relating to any costs and expenditures and approve the remainder of the proposed fee. O. Reg. 415/17, s. 4.

(2) The Board may refuse to approve an amount of a cost or expenditure if the Board is of the view that the cost or expenditure was not incurred by the Financial Services Manager in relation to prescribed matters or that the cost or expenditure was not paid by the Financial Services Manager during the year to which the fee relates. O. Reg. 415/17, s. 4.

**Charging of fee for costs, expenditures**

**10.15** (1) If the Board approves a fee under section 10.14, the fee is payable no later than 30 days following the last day of the month in which the Board's approval is given. O. Reg. 415/17, s. 4.

(2) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager. O. Reg. 415/17, s. 4.

## FAIR ALLOCATION AMOUNT

**Prescribed period, amount**

**11.** (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on January 1, 2005 and ending on April 30, 2017.

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act is less than or equal to the amount determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 of subsection 20 (1) of the Act.

**Determination of estimated financing costs**

**12.** (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following amounts, after eliminating any duplication, that are forecast to become payable during the reference period:

1. Estimated funding costs.
2. Estimated financing entity expenses.
3. Estimated funding rebates.

(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.
2. The principal owing by a financing entity during a reference period is paid in full by applying funds that are forecast to be available to it under the Financing Plan after all other estimated finance amounts for the reference period have been paid in full.

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that one or more determinations under section 9 or 11 of the Act in respect of a past reference period have resulted in a readjustment amount.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 3 of subsection (1), calculate a portion of the readjustment amount that should be attributed to the reference period and include it in the determination of the estimated financing costs in respect of the reference period.

(5) For the purposes of subsection (4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered equally over the remaining reference periods.

**Minister's considerations**

**13.** For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

1. Electricity prices.
2. Interest rates.
3. Inflation.
4. Electricity consumption.
5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

## FINANCING PLAN

**Principles and assumptions**

**14.** (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The IESO deferral for future months, based on the most recent calculation of the fair allocation amount.
2. Future transfers of specified portions of the regulatory asset.
3. The maturities of funding obligations.
4. Cash flow requirements to meet contractual obligations associated with funding obligations.
5. Descriptions of current funding options, including terms and conditions.
6. Descriptions of currency and interest rate hedging programs, if applicable.
7. Financing entity expenses.
8. Interest rates.
9. The need for and the establishment of financing reserve accounts and capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

1. The Financial Services Manager should,
    i. seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of the size and type contemplated by the Financing Plan,
    ii. apply the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests,
    iii. consider the interests of specified consumers with respect to stable and predictable electricity rates,
    iv. act as any reasonably prudent financial services manager would act in similar circumstances, and
    v. deal with related parties on arm's length terms.
2. The Financing Plan should,
    i. identify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada,
    ii. describe how recovery amounts will be applied to funding obligations over time,
    iii. address the capitalization of proposed financing entities,
    iv. describe strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,
    v. seek to minimize tax consequences associated with the incurrence of a funding obligation, and
    vi. articulate the principles by which the Financial Services Manager will make decisions regarding the following:
        A. Interest rates.
        B. The term to maturity of funding obligations.
        C. Refinancing.
        D. Deposits to and withdrawals from reserve accounts.
        E. Indemnifications.
        F. Fees.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by an officer of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

## THE REGULATORY ASSET

**Determination of IESO deferral**

**15.** The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:
    i. The sum of all amounts payable to the IESO in the month by electricity vendors and specified consumers under the *Electricity Act, 1998* and the market rules made under section 32 of that Act, without taking into account any of the following:
        A. Variances reported to and recorded monthly by the IESO in a variance account under section 5 of Ontario Regulation 430/04 (Payments Re Section 25.33 of the Act) made under that Act.
        B. Rates determined by the Board under Part II of the Act.
    ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO, taking into account rates determined under Part II of the Act.
2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.
3. Any amounts incurred by the IESO on or after May 1, 2017 and before the Act came into force.

**Adjustments that may be recorded by the IESO**

**16.** For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.
2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* and costs incurred in relation to the balances.
3. Any amounts paid or incurred by the IESO under section 9.1. O. Reg. 415/17, s. 5.

MISCELLANEOUS

**Investment asset**

**17.** The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustment are deposited into it.
2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

**Appointment of agent, invoicing or collection**

**18.** For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

**Disclosure in marketing materials, offering documents, etc.**

**19.** For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; and

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

**20.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

Back to top

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Cc:** | Gadi Mayman |
| **Subject:** | FW: FYI: AG Report - Fair Hydro Plan (Oct. 17) |
| **Date:** | Monday, October 16, 2017 10:13:00 AM |

---

FYI, AG Report to be released tomorrow at 10:30am.

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Monday, October 16, 2017 9:59 AM
**To:** Martin Schlaepfer (MOF) ; Anna Strathy ; Allison Ue (MCSS) ; Kyle MacIntyre (MOF)
**Subject:** FW: FYI: AG Report - Fair Hydro Plan (Oct. 17)

**From:** Shewaramani, Deepika (MOF)
**Sent:** October 16, 2017 9:55 AM
**To:** Martin, Jessica (MOF) <Jessica.Martin@ontario.ca>; Giroux Namian, Orli (MOF) <Orli.GirouxNamian@ontario.ca>; Koukoulas, Sophia (MOF) <Sophia.Koukoulas@ontario.ca>; Moore, Brynne (MOF) <Brynne.Moore@ontario.ca>
**Cc:** @FIN-L-O-CSB-ISSUES <FIN-L-O-CSB-ISSUES@msgov.gov.on.ca>; Sylvain, Matthew (MOF) <Matthew.Sylvain@ontario.ca>; Maloney, Martha (MOF) <Martha.Maloney@ontario.ca>; Blodgett, Scott (MOF) <Scott.Blodgett@ontario.ca>; Kim, Minzi (MOF) <Minzi.Kim@ontario.ca>
**Subject:** FYI: AG Report - Fair Hydro Plan (Oct. 17)

**Auditor General ON**
@OntarioAuditor
@OntarioAuditor to release Special Report on government's Fair Hydro Plan tomorrow at 10:30 a.m. #onpol

9:47am · 16 Oct 2017 · Twitter Web Client

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Subject:** | FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 11:02:43 AM |
| **Attachments:** | Memorandum on Acceleration Proposal.docx |

Hi Guys:

Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

---

**From:** WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
**Sent:** Thursday, September 07, 2017 4:20 PM
**To:** James Rehob (ENERGY) <James.Rehob@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
***Ontario Power Generation Inc.***
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 **|** E: leslie.wong@opg.com

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

Memorandum

**To:** Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

**Date:** August 30, 2017

**From:** Ontario Power Generation Inc.

**Subject: Acceleration of Ontario Fair Hydro Plan Act Obligations**

Under the *Ontario Fair Hydro Plan Act*, 2017, clean energy adjustments are designed to recover the "funding obligations" and "finance amounts" (as defined in the Act and regulations thereunder, respectively, collectively referred to as the "**Obligations**") that become due during a reference period (each generally a six month period). This means that if there is an event of default under the master trust indenture (the "**Indenture**") that is not or cannot be cured, the full amount of the accelerated Obligations may become due and payable and be included in the calculation of the clean energy adjustments for the next reference period. Furthermore, it is likely that all funding obligations will be cross-defaulted to each other, so acceleration of one series of funding obligations will likely result in acceleration of all funding obligations. Accordingly, electricity rates for specified consumers would be set at a rate for a six-month period that would result in repayment in full of all outstanding and accelerated Obligations. On the assumption that all interested parties would like to avoid such a scenario, we have discussed with the dealers the following as an approach in the context of an event of default:

1. Upon the occurrence of a Default under the Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Province would have the following rights:

(a) a right to receive written notice from the trustee under the Indenture (at the same time that such trustee provides a notice to the financing entity through OPG as the manager) that a Default has occurred;

(b) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the financing entity), a right to receive written notice from the trustee under the Indenture that an Event of Default has occurred; and

(c) a right to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Indenture with respect to the applicable Event of Default.

2. The Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations may not be accelerated until the expiry of the cure period available to the Province. If the Default or Event of Default in question cannot be cured by the Province on behalf of the financing entity within this cure period, then the Province will have the option to "cure" and avoid acceleration of the Obligations by assuming those Obligations. This option would be set out in the provincial protection and assurances agreement. In such circumstances, as in the case of a change of law, the Fair Hydro program would be discontinued and the Obligations owing under the program would be those of the Province.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Ken Kandeepan; Ronald Kwan; Anna Strathy; Keley Katona (ENERGY); Scott Nelms (ENERGY) |
| **Cc:** | Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY) |
| **Subject:** | FW: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 04, 2017 5:57:00 PM |
| **Attachments:** | 12913400-v4-OFHPA - Province Support - Obligor Approval Process.docx |

Has anyone heard from OPG or Torys regarding this since Toby's email? Steve Ashbourne checked in with us to find out as he has not heard anything either.

Thanks.

Malle

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 27, 2017 4:21 PM
**To:** Ramchandani, Rima; Feldman, Michael; Mansoori, Nina; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY
**Cc:** Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

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

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

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

TORYS LLP[torys.com]

**From:** Ramchandani, Rima

**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations

provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

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

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

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than • Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

[3] Confirm arrangements with OPG.

(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will

arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than • Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than • Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than • Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under

Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Mike Manning |
| **Subject:** | FW: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, September 27, 2017 9:28:46 AM |
| **Attachments:** | 12913400-v3-OFHPA - Province Support - Obligor Approval Process.docx |

As discussed
Thanks
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Friday, September 22, 2017 11:41 AM
**To:** Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Gavin He ; Anis Hirani ; John Kim
**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; stephen.ashbourne@blakes.com; Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.
One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.
Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement
Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.
We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.
Toby
Tobias Whitfield

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

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term

of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

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

TORYS LLP[torys.com]

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

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

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account or finance reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account or finance reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account, from a funding rebate or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account or finance reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or from a funding rebate ("Other Funding Obligations"); and

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][2], other than to the extent that funds are available for payment thereof from a finance reserve account or from a funding rebate ("Third Party Expense Obligations"),

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Confirm arrangements with OPG.

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any redemption amounts that are or become payable at the option of the financing entity following a Protection Event, (b) amounts required to be deposited by or on behalf of the financing entity into any capital account or finance reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than [3] Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments, the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

      (ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; and (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General

Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes or bonds is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within 2 Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation related to related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[3] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than 20 Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

[3] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note or bond purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of series of notes or bonds to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing , including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than 10 Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than [2] Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of

or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the specific financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than [20] Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than 20 Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than 5 Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment or early termination right in respect of any Approved Obligation or any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated or otherwise affected;

(c) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(d) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | FW: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, September 20, 2017 3:20:13 PM |

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

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

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing

Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic

copies of the final executed Program Documents.

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

TORYS LLP[torys.com]

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

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

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Mike Manning; James Devine; Carlos Yep; Ronald Kwan; John Kim |
| **Cc:** | John Psinas |
| **Subject:** | FW: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, October 23, 2017 4:33:39 PM |
| **Attachments:** | Change of Law Procedures Agreement - Fair Hydro.DOCX |

Hi Mike and others

Not sure if you had an opportunity to review this but I did go through quickly and if you read past all of the legal terms and conditions including the language it seems to set out a reasonable process for the Province's review of debt issues by the Financing Entity to ensure that they fall within the terms and conditions of the Protection Agreement.

Page 5 details what will be provided to us prior to each issuance, maybe we can have a discussion with MOF Legal and Steve Ashbourne.

Thanks

Ken k

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]

**Sent:** Friday, October 20, 2017 10:23 AM

**To:** Tobias P. Whitfield (MOF)

**Cc:** 'LEE John -TREASURY' ; 'RYFA Ken -TREASURY' ; 'WONG Leslie -LAWDIV' ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Mark Donaldson (MOF) ; Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; 'Cengarle, John (MOF)' ; Ronald Kwan ; Keley Katona (ENERGY) ; Gavin He ; Anis Hirani ; John Kim ; 'Veinot, Cindy (TBS)' ; Malle Hanslep (MOF) ; 'Thouin, Alena (ENERGY)' ; Tom McKinlay (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LADAK Lubna -TREASURY' ; Emes, Aaron ; Mansoori, Nina

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Mansoori, Nina

**Sent:** October-18-17 9:53 AM

**To:** 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott

(MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

**Sent:** October-13-17 4:47 PM

**To:** Mansoori, Nina <nmansoori@torys.com>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.
We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.
Best
Toby

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

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,
Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.
As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.
Best Regards,
Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle,

John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

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

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

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

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to

reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing

Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

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

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

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

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

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

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

# CHANGE OF LAW PROCEDURES AGREEMENT

**THIS AGREEMENT** made as of the ■ day of ■, 2017.

**B E T W E E N:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE ACTING TOGETHER**

– and –

**ONTARIO POWER GENERATION INC.**

**RECITALS:**

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017*, S.O. 2017, c. 16, Schedule 1 (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

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

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer a specified portion of the Regulatory Asset to the Issuer on a fully-serviced basis and such Transfer shall result in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the specified portion of the Regulatory Asset;

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

**AND WHEREAS** the Province has agreed in favour of the Indenture Trustee in the Change of Law Protection Agreement to make regularly scheduled payments on certain of the Funding Obligations and related obligations of the Issuer (the "**Specified Claims**") in certain circumstances;

**AND WHEREAS** the parties hereto wish to set out the procedures by which the Province provides its approval to the Manager to certify that an incurrence of Specified Claims by the Issuer from time to time is covered under the Change of Law Protection Agreement;

**NOW THEREFORE** in consideration of one dollar ($1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree, each with the other, as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, except where the context otherwise requires, the following terms will have the following meanings:

"**Act**" has the meaning given to that term in the recitals.

"**Agreement**" means this Change of Law Procedures Agreement.

"**Business Day**" means every day except a Saturday or Sunday, or a day which is a statutory or civic holiday in the Province of Ontario.

"**Certification**" means the certification by the Manager described in Section ■[1] of the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated ■, 2017 between the Province, as obligor, the Indenture Trustee, and the Issuer.

"**Disclosure Document**" means the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of any Funding Obligations.

"**Forecast**" has the meaning attributed to such term in Section 2.2(a).

"**IESO**" means the Independent Electricity System Operator.

"**Indenture**" has the meaning attributed to such term in Section 2.3(a)(iv).

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of certain specified creditors, or any successor thereto, under the Indenture.

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario.

"**Manager**" means Ontario Power Generation Inc., in its capacity as manager appointed under the management agreement referenced in Section 2.3(a)(ii) to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Person**" means any natural person, partnership, limited partnership, limited liability partnership, joint venture, syndicate, sole proprietorship, company or corporation (with or without share capital), limited liability corporation, unlimited liability company, joint stock company, unincorporated association, trust, trustee, executor, administrator or other legal

[1] This will be the section of the Change of Law Protection Agreement which sets out that a Specified Claim will be covered under the Change of Law Protection Agreement if the Manager delivers a certificate, signed by at least two executive officers of the Manager and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.

personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted and pronouns have a similarly extended meaning.

"**Program Maximum**" means the maximum Canadian dollar amount determined and confirmed in writing in accordance with Section 2.2.

"**Protection Event**" has the meaning attributed to such term in the Change of Law Protection Agreement.

"**Regulatory Asset**" has the meaning attributed to such term in the recitals.

"**Reviewed Documentation**" has the meaning attributed to such term in Section 2.3.

"**Specified Claims**" has the meaning attributed to such term in the recitals.

"**Substantially in the Form**" means:

(i) with respect to the Reviewed Documentation referred to in 2.3(a)(i) to 2.3(a)(xiv), that the covenants of the Issuer are no more onerous in any material respect and there are events of default that are consistent in all material respects, respectively, with the covenants of the Issuer and events of default contained in the Reviewed Documentation; and

(ii) with respect to the Disclosure Document referred to in 2.3(a)(xv), that there are no material differences between the form and substance of the proposed disclosure document and such disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligations subject to distribution thereunder.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Act and the regulations made thereunder or incidental thereto.

**1.2 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and will not affect the construction or interpretation hereof.

**1.3 Interpretation**

In this Agreement, unless the context otherwise requires:

1.3.1 words importing the singular shall include the plural and vice versa, words importing gender shall include all genders or the neuter, and words importing the neuter shall include all genders;

1.3.2 the words "include", "includes", "including", or any variations thereof, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather

as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

1.3.3 references to any Person include such Person's successors and permitted assigns;

1.3.4 except as otherwise provided in this Agreement, any reference in this Agreement to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all rules and regulations made under such statute, in the case of a statute, all amendments made to such statute, regulation, policy, rule or instrument, and any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

1.3.5 any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

1.3.6 in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

**1.4 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement.

**1.6 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.7 Governing Law**

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## ARTICLE 2
## APPROVAL PROCESS

**2.1 Approval Process**

The Manager is authorized to make a Certification in respect of a specific incurrence of Funding Obligations and other Specified Claims upon the following conditions precedent having been satisfied:

(a) at the time such Funding Obligations are to be incurred, the maximum aggregate payment amounts due or becoming due under such Funding Obligations, together with all other outstanding or committed Specified Claims previously subject to a Certification, do not exceed the Program Maximum in effect at that time; and

(b) The Manager delivers a certificate, signed by at least two of its executive officers and addressed to the Province, not less than **[■]** Business Days prior to the incurrence of such Funding Obligations:

(i) setting out the material terms of such Funding Obligations pertaining to principal amount, pricing and third party fees; and

(ii) confirming that:

(A) the Funding Obligations (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the Act and the regulations made thereunder, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and

(B) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation.

**2.2 Program Maximum**

(a) The initial Program Maximum will be determined prior to the initial issuance of Funding Obligations under the Indenture in accordance with this Section 2.2. The Program Maximum will be based on the Manager's forecast of the maximum payment obligations expected to arise under Specified Claims during the next 24 month period, based on and in accordance with the applicable Financing Plan (the "**Forecast**"). The Manager will be required to deliver the Forecast to the Province

not less than **[thirty (30)]** Business Days prior to the proposed incurrence of the initial Funding Obligations under the Indenture. If the Province agrees that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods, then the Province will confirm in writing to the Manager within **[thirty (30)]** Business Days of receipt of the Forecast that it agrees with the Program Maximum.

(b) The Forecast will be updated and delivered to the Province between nine (9) and twelve (12) months prior to the expiry of the then current Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will confirm that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods.

(c) If the Province does not agree with the determination of the Program Maximum, then the Province and the Manager will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and the Program Maximum will be revised within **[thirty (30)]** Business Days of receipt of the Forecast. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to the Manager, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

**2.3 Reviewed Documentation**

(a) The Manager will ensure that not less than **[■]** Business Days prior to the initial issuance of any Funding Obligations under the Indenture, the Province will have received copies, in substantially final form, of the following documents:

(i) the declaration of trust made as of ■, 2017 under which the Issuer was established;

(ii) the management agreement dated ■, 2017 between the Manager and the Issuer;

(iii) the master transfer and servicing agreement dated ■, 2017 between the Issuer, the IESO and the Indenture Trustee;

(iv) the master trust indenture dated ■, 2017 between the Issuer and the Indenture Trustee (the "**Indenture**");

(v) the Senior Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-1 Notes;

(vi) the Subordinated Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-1 Notes;

(vii) the Senior Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-2 Notes;

(viii) the Subordinated Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-2 Notes;

(ix) the Agency Agreement dated ■, 2017 between ■;

(x) the Subscription Agreement dated ■, 2017 between ■;

(xi) the schedule to an ISDA Master Agreement dated ■, 2017 governing derivative transactions that may be entered into by the Issuer from time to time;

(xii) if applicable, any other agreement or instrument under which a Funding Obligation may arise or be affected;

(xiii) if applicable, any other agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act;

(xiv) the security agreement dated ■, 2017 granted by the IESO to the Issuer; and

(xv) the Preliminary and Final Offering Memorandums of the Issuer together with any related material information.

(b) The Province will confirm within **[■]** Business Days of receipt of the documents referenced in Section 2.3(a) if such reviewed documents shall be the "Reviewed Documentation" for the purposes of this Agreement; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement.

(c) Any proposed material amendments, additions or supplements to the Reviewed Documentation will be provided to the Province not less than **[fifteen (15)]** Business Days prior to any proposed use or such documents becoming effective. Such material amendments, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of this Agreement if the Province confirms the same within **[fifteen (15)]** Business Days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.

**2.4 Termination**

This Agreement will continue in full force and effect so long as any Specified Claims remain outstanding and until the Issuer has satisfied all of its obligations under the Reviewed Documentation.

## ARTICLE 3
## COVENANTS OF MANAGER

### 3.1 Reporting

Promptly after the issuance of any Funding Obligations by the Issuer (or an amendment or replacement thereof) from time to time, the Manager will provide the Province with:

(a) a copy of the then most recent Financing Plan;

(b) electronic copies of all related closing documents executed by or on behalf of the Issuer in connection with such incurrence, amendment or replacement of such Funding Obligations that would affect the Issuer's assets or obligations (including, for greater certainty, any Disclosure Documents); and

(c) all additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 3.2 Other Covenants

(a) The Manager will comply and ensure compliance by the Issuer with the Act and the regulations made thereunder and any other enactment related thereto;

(b) After the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), the Manager will not, without the Province's prior written consent, permit any Issuer to exercise any redemption, pre-payment, early termination right in respect of any Specified Claim or exercise any other election or privilege in respect of any Specified Claim, in each case, if as a result the obligations applicable to the Specified Claim under the Change of Law Protection Agreement would be accelerated; and

(c) The Manager will ensure that any disclosure (including in any Disclosure Document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement and this Agreement will be subject to the prior review and approval of the Province unless that disclosure is substantially in a form previously approved by the Province.

### 3.3 Validity

For greater certainty, a failure by the Manager to perform the covenants in this Article 3 will not affect the validity of a Certification made under the Change of Law Protection Agreement in accordance with requirements of Section 2.1 of this Agreement.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES

### 4.1 Province

The Province hereby represents and warrants to the Manager that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice or lapse of time or both) a breach of or default under any agreement to which the Province is a party or by which it is bound;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is or, if applicable, will then be a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(ii) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments; and

(iii) statutory limitations of general application respecting the enforceability of claims against the Province or its property.

**4.2 The Manager**

The Manager hereby represents and warrants to the Province that:

(a) the Manager has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Manager of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice

or lapse of time or both) a breach of or default under any agreement to which the Manager is a party or by which it is bound;

(c) all necessary action has been taken by the Manager to authorize the execution and delivery of this Agreement by the Manager and the performance by the Manager of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Manager and is or, if applicable, will then be a legal, valid and binding obligation of the Manager, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(ii) general equitable principles.

## ARTICLE 5
## GENERAL PROVISIONS

### 5.1 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 5.1 shall be null and void.

### 5.2 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 5.3 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the

time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this section. Notices and other communications will be addressed as follows:

(a) if to the Province:

Ministry of Finance
7 Queen's Park Crescent, 7th Floor
Toronto, Ontario M7A 1Y7

Attention: Minister of Finance
Facsimile: (416) 325-0374

and

Ministry of Energy
5th Floor
56 Wellesley Street West
Toronto, Ontario M7A 2E7

Attention: Legal Director
Facsimile: (416) 325-1781

(b) if to the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: ■
Facsimile: ■

or to such other addresses as a party may from time to time notify the others in accordance with this Section 5.3.

**5.4 Further Assurances**

Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

**5.5 Counterparts; Electronic Delivery**

This Agreement may be signed in counterparts and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by either party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the day and year first above written.

**ONTARIO POWER GENERATION INC., in its capacity as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Ronald Kwan; John Kim |
| **Cc:** | Tobias P. Whitfield (MOF); Elcombe, James (MOF) |
| **Subject:** | FW: Fair Hydro -- Drafts of DOT and Management Agreement |
| **Date:** | Sunday, September 10, 2017 2:10:25 PM |
| **Attachments:** | ATT00001.htm<br>Fair Hydro - Management Agreement.docx<br>ATT00002.htm<br>Declaration of Trust - Fair Hydro.docx<br>ATT00003.htm |

---

FYI. Some further background documents.

-----Original Message-----

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: September-08-17 8:43 PM

To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Rehob, James (ENERGY); Elcombe, James (MOF); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY)

Subject: Fwd: Fair Hydro -- Drafts of DOT and Management Agreement

FYI. I don't expect these documents will advance our understanding of the points of interest as they are basic structural documents regarding the administration of the FE, rather than the obligations to be incurred by the FE. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>

Dir: 416-863-3086<tel:416-863-3086>

_____

[cid:image8c4407.GIF@45a0c203.449e6f26]

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653

blakes.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blakes.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=Hk-KXg3eeX5dHfPF45b1rwEVjp-jwiVa3qdUNfuDQmg&s=SBJaqlW3fFcY--6jfDiTT5KX5f1_88sJG1GNMB26L0w&e= > | Twitter<https://urldefense.proofpoint.com/v2/url?u=http-3A__twitter.com_BlakesLaw_&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=Hk-KXg3eeX5dHfPF45b1rwEVjp-jwiVa3qdUNfuDQmg&s=iRqTmBkRp242r5XMb_uYkXibUmxxLYTw04vbVaojPN4&e= > | Unsubscribe<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blakes.com_English_Resources_Bulletins_Pages_unsubscribe.aspx&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=Hk-KXg3eeX5dHfPF45b1rwEVjp-jwiVa3qdUNfuDQmg&s=ciZfo65NsHzKYaWlxHhlR08LS--tiRC7K35EDZWsEKo&e= >

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

Begin forwarded message:

From: "Mansoori, Nina" <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Date: September 8, 2017 at 6:32:42 PM EDT

To: "'ASHBOURNE, STEPHEN'" <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>

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

Subject: RE: Fair Hydro -- Drafts of DOT and Management Agreement

Steve, as requested, attached are our current working drafts of the Fair Hydro Management Agreement and the Declaration of Trust. Please note that these drafts are still in progress and, in particular, are subject to revision to reflect comments from OPG and the broader working group, as well as finalization of the other transaction documents.

Please let us know if you have any comments or questions on the attached.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=Hk-KXg3eeX5dHfPF45b1rwEVjp-jwiVa3qdUNfuDQmg&s=rEI-zNZNgK1H3pDy5uPfdOoEiG7sm6VljaSxYxl_Th4&e= >

<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=Hk-KXg3eeX5dHfPF45b1rwEVjp-jwiVa3qdUNfuDQmg&s=rEI-zNZNgK1H3pDy5uPfdOoEiG7sm6VljaSxYxl_Th4&e= >

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

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

# MANAGEMENT AGREEMENT

between

**[FINANCING ENTITY]**
as Issuer

- and -

**ONTARIO POWER GENERATION INC.**
as Manager

Acknowledged and Accepted by

■
as Indenture Trustee

**Dated as of ■, 2017**

## TABLE OF CONTENTS

**ARTICLE 1**
**INTERPRETATION ..... 2**
1.1 Definitions ..... 2

**ARTICLE 2**
**INTRODUCTORY PROVISIONS ..... 5**
2.1 Sections and Headings ..... 5
2.2 Extended Meanings ..... 5
2.3 References to Acts of the Issuer or the Issuer Trustee ..... 5

**ARTICLE 3**
**APPOINTMENT OF THE MANAGER ..... 5**
3.1 Appointment and Authority of the Manager ..... 5

**ARTICLE 4**
**DUTIES AND OBLIGATIONS OF THE MANAGER ..... 6**
4.1 Program Agreements ..... 6
4.2 Issuer Investment Interest ..... 10
4.3 Investment Interest Records ..... 11
4.4 Payment of Other Issuer Fees and Expenses ..... 12
4.5 Delegation ..... 12
4.6 Annual Compliance Certificates ..... 13
4.7 Acknowledgment of Duties as Financial Services Manager ..... 13

**ARTICLE 5**
**OTHER PROVISIONS RELATING**
**TO THE DUTIES AND COMPENSATION ..... 13**
5.1 Standard of Care ..... 13
5.2 Compliance with Program Agreements; Conformity with Law ..... 14
5.3 Liabilities ..... 14
5.4 Compensation of the Manager ..... 15
5.5 Compensation of the Issuer ..... 15
5.6 Indemnification by Manager ..... 15
5.7 Contracting with Itself and Affiliates ..... 17

**ARTICLE 6**
**REPRESENTATIONS AND WARRANTIES ..... 17**
6.1 Representations of the Issuer ..... 17

6.2 Representations of the Manager ..... 17

**ARTICLE 7**
**TERMINATION AND RESIGNATION ..... 17**
7.1 Termination ..... 17

**ARTICLE 8**
**MISCELLANEOUS ..... 18**
8.1 Appointment of Manager as Attorney-in-Fact ..... 18
8.2 Amendments and Waivers ..... 18
8.3 Withholding Rights ..... 18
8.4 No Petition ..... 19
8.5 Notice ..... 19
8.6 Recourse to Issuer Trustee and the Issuer ..... 20
8.7 Severability ..... 20
8.8 Execution of Counterparts; Electronic Delivery ..... 20
8.9 Governing Law ..... 20
8.10 Grant of Security Interest to Indenture Trustee ..... 20

**EXHIBIT**

Exhibit A – Annual Compliance Certificate

# MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

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

(the "**Issuer**")

- and -

**ONTARIO POWER GENERATION INC.**, a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

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

(the "**Indenture Trustee**")

**WHEREAS** the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

**AND WHEREAS** Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

**AND WHEREAS** the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

**AND WHEREAS** the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, those rights and obligations set forth in Sections 4.1(a)(vii), 4.1(a)(xx), 4.1(a)(xxiii), 4.3(a), 4.7(d), 4.7(e), 5.6, 7.1, 8.2(b) and 8.10 hereof;

**AND WHEREAS** the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

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

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

**["Administrative Agent" means [Ontario Power Generation Inc.], as administrative agent under the Administrative Services Agreement, and its successors and assigns in such capacity;**

**"Administrative Services Agreement" means the administrative services agreement dated ■, 2017 between the Administrative Agent and the Issuer;]**[1]

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

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

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

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

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

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

[1] **NTD**: Subject to confirmation that this agreement will be required.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital continued under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be supplemented, amended, replaced or amended and restated from time to time;

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

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

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

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

["**Management Base Fee**" means, in respect of a calendar month, a base fee equal to (i) the product of (A) the Management Fee Rate and (B) the average of the opening and closing balance of the outstanding principal amount of all Issuer Funding Obligations in the previous calendar month incurred to fund the acquisition of the Issuer Investment Interest; and (ii) divided by 12;

"**Management Fee Rate**" means the rate set out on Schedule A;

"**Management Variable Fee**" means, in respect of each calendar year, a fee equal to the sum of the [Variable Fee] calculated for each tranche of Issuer Funding Obligations issued in the applicable calendar year;] [2]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO and acknowledged and accepted by the Indenture Trustee, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"**Program Agreements**" means the Indenture, each Supplemental Indenture, the Declaration of Trust, this Agreement, **[the Administrative Services Agreement,]** the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the **[Provincial Protections and Assurances Agreement]**[3], the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements and Note Purchase Agreements in effect at such time and all other documents and certificates delivered in connection therewith;

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means the regulations promulgated under the Act;

"**Servicer CEA Collections**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

---

[2] **NTD:** Fee provisions and related definitions subject to finalization of fee regulations.

[3] **NTD**: To be conformed to final agreement.

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

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

## ARTICLE 2
## INTRODUCTORY PROVISIONS

### 2.1 Sections and Headings

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

### 2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

### 2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

## ARTICLE 3
## APPOINTMENT OF THE MANAGER

### 3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. **[Notwithstanding anything to the contrary in this Agreement, the Manager shall not provide or cause to be provided the services or perform any of the duties delegated to the Administrative Agent under the Administrative Services Agreement.]**

## ARTICLE 4
## DUTIES AND OBLIGATIONS OF THE MANAGER

### 4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, Liquidity Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

**4.2 Issuer Investment Interest**

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail

to permit reconciliation between the Servicer CEA Collections and the Clean Energy Adjustment;

(e) instituting any action or proceeding necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any action or proceeding necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

**4.3 Investment Interest Records**

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during

normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee, as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section 4.3 shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section 4.3.

(c) Nothing in this Section 4.3 shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section 4.3, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

**4.4 Payment of Other Issuer Fees and Expenses**

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

**4.5 Delegation**

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

### 4.6 Annual Compliance Certificates

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

### 4.7 Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

## ARTICLE 5
## OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

### 5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon

the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

**5.2 Compliance with Program Agreements; Conformity with Law**

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

**5.3 Liabilities**

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the standard of care required under Section 5.1.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against

the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

### 5.4 Compensation of the Manager

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements: (i) the Management Base Fee on a monthly basis and (ii) the Management Variable Fee on an annual basis.[4] The Management Base Fee and the Management Variable Fee are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

### 5.5 Compensation of the Issuer

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

### 5.6 Indemnification by Manager

The Manager agrees to indemnify, defend and hold harmless the Issuer from and against any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the standard of care required under Section 5.1, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which

[4] **NTD**: Section 5.4 and the related defined terms are subject to finalization of the fee regulations.

decision will be binding upon the Issuer. It is, however, expressly understood that the Manager is not agreeing to indemnify or hold the Issuer harmless with respect to any of the following:

(a) payments due on Issuer Funding Obligations or other amounts borrowed;

(b) any breach or failure to perform on the part of any other third party under any Program Agreement;

(c) any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

(d) any amount for which the Issuer agrees to indemnify the Manager hereunder;

(e) any liability of the Issuer accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(f) any losses of the Issuer arising due to risks inherent in the Issuer Investment Interest; or

(g) any statements or certificates provided by the Issuer to the effect that

(i) any Funding Obligation is consistent with the Financing Plan, or

(ii) the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period.

It is further understood that the Manager is not agreeing to indemnify or hold harmless the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

The Manager agrees to indemnify, defend and hold harmless the Indenture Trustee from and against any and all liabilities which may be imposed on, incurred by or asserted against the Indenture Trustee as the result of any wilful misconduct or gross negligence relating to the maintenance and custody by the Manager, as custodian, of the Investment Interest Records; provided that (a) the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Indenture Trustee and (b) the Manager shall not be liable for any portion of any liability resulting from the wilful misconduct, bad faith or gross negligence of the Indenture Trustee.

### 5.7 Contracting with Itself and Affiliates

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

### 6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and the Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

### 6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (i) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager and the Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (ii) it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

## ARTICLE 7
## TERMINATION AND RESIGNATION

### 7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and 8.3) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30$^{th}$ day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Appointment of Manager as Attorney-in-Fact

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

### 8.2 Amendments and Waivers

(a) Subject to Section 8.2(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 8.3 Withholding Rights

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

respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.4 No Petition**

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

**8.5 Notice**

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

■
■
■
■

Email: ■
Attention: ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

### 8.6 Recourse to Issuer Trustee and the Issuer

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

### 8.7 Severability

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

### 8.8 Execution of Counterparts; Electronic Delivery

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

### 8.9 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 8.10 Grant of Security Interest to Indenture Trustee

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

***[Remainder of page intentionally left blank.]***

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

**[FINANCING ENTITY], by its sole trustee ■**
**as Issuer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ACKNOWLEDGED AND ACCEPTED:**

■
**as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

# SCHEDULE A

**[NTD: Subject to finalization of the fee regulations.]**

## EXHIBIT A

## ANNUAL COMPLIANCE CERTIFICATE

**TO**: ■, (the "**Issuer Trustee**") in its capacity as issuer trustee of ■ (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

[TRUST COMPANY]

as Issuer Trustee of

[FAIR HYDRO TRUST]

---

# DECLARATION OF TRUST

Made as of **[■]**, 2017

---

## TABLE OF CONTENTS

**Page**


**ARTICLE 1 INTERPRETATION ..... 1**

1.1 Definitions ..... 1
1.2 Interpretation ..... 5
1.3 Accounting Principles ..... 6
1.4 References to Acts of the Trust ..... 6

**ARTICLE 2 THE TRUST ..... 6**

2.1 Purpose and Activities of the Trust ..... 6
2.2 Limitation on Certain Activities ..... 7
2.3 Name and Head Office ..... 8
2.4 Nature of the Trust ..... 8
2.5 Rights of Unitholders ..... 8

**ARTICLE 3 UNITS ..... 9**

3.1 Nature of Units ..... 9
3.2 Consideration of Units ..... 9
3.3 No Pre-Emptive Rights ..... 9
3.4 Fractional Units ..... 9
3.5 Allotment and Issue ..... 10
3.6 Prohibited Issuances and Transfers ..... 10
3.7 Liability of Unitholders ..... 11

**ARTICLE 4 REDEMPTION OF UNITS ..... 12**

4.1 Redemption of Units ..... 12

**ARTICLE 5 RIGHTS AND POWERS OF ISSUER TRUSTEE ..... 12**

5.1 General Rights and Powers ..... 12
5.2 Acquisition of Assets and Deposit of Funds ..... 13
5.3 Legal Title and Custody ..... 13
5.4 Disposition of Trust Property ..... 13
5.5 Management of Trust Property ..... 13
5.6 Power to Borrow Money and Issue Funding Obligations ..... 14
5.7 Hedging Agreements ..... 14
5.8 Execution of Instruments ..... 14
5.9 Facsimile Signatures ..... 15
5.10 Taxes ..... 15
5.11 Collection ..... 15
5.12 Expenses and Compensation of Issuer Trustee ..... 16
5.13 Allocation ..... 16
5.14 Fiscal Year and Form of Accounts ..... 16
5.15 Power to Contract ..... 17
5.16 Indemnification ..... 18

**TABLE OF CONTENTS**
(continued)

**Page**


5.17 Further Powers ..... 18
5.18 Auditors ..... 18
5.19 Defect in Appointment ..... 18
5.20 Status ..... 18

**ARTICLE 6 REPLACEMENT OF ISSUER TRUSTEE ..... 19**

6.1 Resignation of Issuer Trustee ..... 19
6.2 Removal of Issuer Trustee ..... 19
6.3 Vacancy ..... 19
6.4 Appointment of New Issuer Trustee ..... 20
6.5 Merger, Consolidation and Amalgamation ..... 20
6.6 Vesting in Successor Issuer Trustee ..... 20
6.7 Confidentiality ..... 20
6.8 Right to Disclose ..... 21

**ARTICLE 7 STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS ..... 21**

7.1 Standard of Care ..... 21
7.2 Limitation of Liability of Issuer Trustee ..... 21
7.3 Indemnification of the Issuer Trustee ..... 22
7.4 Reliance upon Advice ..... 22
7.5 Retain Experts ..... 23
7.6 Reliance on Experts ..... 23
7.7 Provisions Regarding Liability ..... 23

**ARTICLE 8 RECORDS ..... 23**

8.1 Records to be Kept ..... 23
8.2 Segregation of Assets ..... 23
8.3 Method of Keeping Records ..... 24
8.4 Annual Financial Statements ..... 24

**ARTICLE 9 MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS ..... 24**

9.1 Annual Meeting ..... 24
9.2 Other Meetings ..... 24
9.3 Quorum and Voting ..... 24
9.4 Written Resolution ..... 24

**ARTICLE 10 AMENDMENT ..... 25**

10.1 Amendment ..... 25
10.2 Automatic Amendment ..... 25
10.3 Supplemental Declaration of Trust ..... 25

**TABLE OF CONTENTS**
(continued)

**Page**

**ARTICLE 11 DISTRIBUTION OF TRUST PROPERTY ..... 26**

11.1 Distributions ..... 26
11.2 Allocation ..... 27
11.3 Payment of Distributions ..... 28
11.4 Legal Rights ..... 29
11.5 Income Tax Matters ..... 29
11.6 Designations ..... 29
11.7 Withholding Taxes ..... 29

**ARTICLE 12 TERMINATION OF THE TRUST ..... 29**

12.1 Termination ..... 29

**ARTICLE 13 GENERAL ..... 30**

13.1 Irrevocability ..... 30
13.2 Change of Office ..... 30
13.3 Execution of Instruments ..... 30
13.4 Manner of Giving Notice ..... 30
13.5 Taxation Information ..... 31
13.6 Severability ..... 31
13.7 Governing Law ..... 31
13.8 Language ..... 31

**THIS DECLARATION OF TRUST** is made as of [■], 2017 by ■, a trust company established under the laws of **[Canada]** (the "**Issuer Trustee**").

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

**AND WHEREAS** the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

**NOW THEREFORE** the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Administrative Agent**" means **[OPG]**, as Administrative Agent under the Administrative Services Agreement, or any successor Administrative Agent to the extent permitted under the Administrative Services Agreement.

"**Administrative Services Agreement**" means the administrative services agreement dated the date hereof between the Trust and the Administrative Agent pursuant to which the Administrative Agent will arrange for the provisions of certain services to the Trust.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

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

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

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

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and

territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means ■ and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO, and acknowledged and accepted by the Indenture Trustee.

"**net realized capital gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the net realized capital gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Administrative Services Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, the **[Provincial Protections and Assurances Agreement]** and any hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**[Provincial Protections and Assurances Agreement]**" means the **[Provincial Protections and Assurances Agreement]** to be entered into between Her Majesty the

Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means **[Fair Hydro Trust]**, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.[1]

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

**1.2 Interpretation**

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

[1] Note: It is proposed that a single unit of the Trust will be issued to the Indenture Trustee (in addition to units to OPG or a subsidiary of OPG) in order to ensure that OPG or a subsidiary of OPG does not have the capability to cause the Trust to be wound-up.

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

### 1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

### 1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

## ARTICLE 2
## THE TRUST

### 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d) above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

**2.2 Limitation on Certain Activities**

Notwithstanding any other provision of this Declaration of Trust, the Administrative Services Agreement or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit

of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

## 2.3 Name and Head Office

The English form of the name of the Trust is **["■"]** and the French form of the name of the Trust is **["■"]**. The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at **[*address of Issuer Trustee*]**.

## 2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

## 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall

confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

## ARTICLE 3
## UNITS

### 3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust (other than Income of the Trust allocated and distributed to redeeming Unitholders), net realized capital gains of the Trust (other than net realized capital gains of the Trust allocated and distributed to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

### 3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

### 3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

### 3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units

will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

### 3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

### 3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

### 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

## ARTICLE 4
## REDEMPTION OF UNITS

### 4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the fair market value (the "**Redemption Price**") of such Units established by the Issuer Trustee, acting reasonably (which, for greater certainty, will not necessarily be net asset value), payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will, subject to compliance with any regulatory requirements, distribute to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price.

(4) Upon satisfaction of the Redemption Price, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) On redemption of a Unit, the Issuer Trustee may designate and pay to the redeeming Unitholder as part of, and not in addition to, the Redemption Price, such part of the net realized capital gains of the Trust and/or Income of the Trust as is realized by the Trust in order to fund the Redemption Price.

## ARTICLE 5
## RIGHTS AND POWERS OF ISSUER TRUSTEE

### 5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this

Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

### 5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

### 5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

### 5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

### 5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

### 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

### 5.7 Hedging Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

### 5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Administrative Agent or the Manager.

### 5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

### 5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

### 5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

**5.12 Expenses and Compensation of Issuer Trustee**

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

**5.13 Allocation**

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

**5.14 Fiscal Year and Form of Accounts**

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the

Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

### 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or the Administrative Agent or any other Person who, under the supervision of the Manager or Administrative Agent, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Administrative Services Agreement or Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Administrative Agent under the Administrative Services Agreement and the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

**5.16 Indemnification**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

**5.17 Further Powers**

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

**5.18 Auditors**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

**5.19 Defect in Appointment**

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

**5.20 Status**

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

## ARTICLE 6
## REPLACEMENT OF ISSUER TRUSTEE

### 6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

### 6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

### 6.3 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate

the appointment of the Administrative Agent under the Administrative Services Agreement or the Manager under the Management Agreement.

### 6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

### 6.5 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

### 6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

### 6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

### 6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

## ARTICLE 7
## STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

### 7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Administrative Agent or Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty, the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

### 7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply with the standard of

care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

### 7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Administrative Agent or the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

### 7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Administrative Agent or the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

### 7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

### 7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

### 7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

## ARTICLE 8
## RECORDS

### 8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day’s notice to such Person.

### 8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

### 8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

### 8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

## ARTICLE 9
## MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

### 9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

### 9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

### 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

### 9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

## ARTICLE 10
## AMENDMENT

### 10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

### 10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

### 10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer

Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

## ARTICLE 11
## DISTRIBUTION OF TRUST PROPERTY[2]

### 11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, net realized capital gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsection 11.1(1) without determining the portion of such distribution that is payable out of Income of the Trust, net realized capital gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(3) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and net realized capital gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the "SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) any amount of the Income of the Trust payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the net realized capital gains of the Trust for such year exceeds the aggregate of (A) any amount of the net realized capital gains of the Trust payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or

[2] Subject to PILs exemption.

payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of net realized capital gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the net realized capital gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(3) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(4) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsection 11.1(1) and on the last day of the taxation year in respect of a distribution pursuant to subsection 11.1(3). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to section 11.3, amounts which are payable to Unitholders will be paid in cash.

**11.2 Allocation**

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), net realized capital gains of the Trust, returns of capital or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders, subject to the discretion of the Issuer Trustee to adopt an allocation method which the Issuer Trustee considers to be more reasonable in the circumstances.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, net realized capital gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(3)(a)(A) and 11.1(3)(a)(B);

(b) second, the net realized capital gains of the Trust for such year to the extent, if any, that the net realized capital gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(3)(b)(A) and 11.1(3)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(3) For greater certainty it is hereby declared that any distribution of net realized capital gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

**11.3 Payment of Distributions**

(1) Distributions to a Unitholder will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and net realized capital gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust

Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

### 11.4 Legal Rights

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

### 11.5 Income Tax Matters

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

### 11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

### 11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions payable to a Unitholder amounts required by law to be deducted or withheld from such Unitholder's distributions, whether such distributions are in the form of cash, a promissory note, additional Units or otherwise. To the extent that any amounts are deducted or withheld from payments described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to a Unitholder in respect of the distribution payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee elects to pay a distribution pursuant to subsection 11.3(3), the Unitholder shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

## ARTICLE 12
## TERMINATION OF THE TRUST

### 12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous

approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust, including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

## ARTICLE 13
## GENERAL

### 13.1 Irrevocability

The Trust shall be irrevocable.

### 13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

### 13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

### 13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

### 13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

### 13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

### 13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

### 13.8 Language

*Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.* The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**IN WITNESS WHEREOF** the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

**[TRUST COMPANY]**,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

| | |
|---|---|
| **From:** | Sarah Harris |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Tobias P. Whitfield (MOF); Opal Kandelas; Mike Manning; Dean Hwang |
| **Subject:** | FW: Fair Hydro -- Form of ISDA Schedule |
| **Date:** | Wednesday, October 25, 2017 2:31:55 PM |

Hi Malle,
When you're available to discuss, please let me know. If it is possible for you to share the draft schedule in advance, that would be helpful.
Thanks,
Sarah

**From:** Mike Manning
**Sent:** Tuesday, October 24, 2017 6:49 PM
**To:** Malle Hanslep (MOF)
**Cc:** Tobias P. Whitfield (MOF) ; Opal Kandelas ; Sarah Harris
**Subject:** Re: Fair Hydro -- Form of ISDA Schedule

I think that is a good idea. We may need all hands on deck.
Thanks, Mike

Sent from my iPhone

On Oct 24, 2017, at 5:36 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Mike
>
> Although we are not really going to give much input to the terms of the, various agreements etc I am wondering whether it makes sense to have the documentation group involved in this project. I know that Opal came to one of the early meetings as there are going to be quite a few agreements to review.
>
> Perhaps we can discuss this tomorrow?
>
> Thanks
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Mansoori, Nina <nmansoori@torys.com>
> Sent: Tuesday, October 24, 2017 17:21
> To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
> Cc: Feldman, Michael; Ramchandani, Rima; Olusoga, Yinka; Saulnier, Brett; Mansoori, Nina
> Subject: RE: Fair Hydro -- Form of ISDA Schedule
>
> All,
>
> We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.
>
> Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada |
www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >

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

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

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan; Mike Manning; John Kim; Ronald Kwan; Carlos Yep; James Devine; Scott Nelms (ENERGY); Keley Katona (ENERGY); Mark Donaldson (MOF); Veinot, Cindy (TBS) |
| **Cc:** | Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | FW: Fair Hydro -- Master Trust Indenture and Warehouse Supplemental Indenture |
| **Date:** | Wednesday, November 08, 2017 9:52:30 AM |
| **Attachments:** | Master Trust Indenture (November 7th Rating Agency Draft).DOCX<br>Blackline - MTI.pdf<br>MTSA (November 7th Rating Agency Draft).DOCX<br>Blackline - MTSA.pdf<br>IESO Security Agreement (November 7th Rating Agency Draft).DOCX<br>Warehouse Supplement - Nov 6, 2017 (Osler).docx |

Hi,

Here are updated versions of these documents.

We haven't heard anything on the protection agreement and process agreement.

Thanks,

Malle

**From:** Saulnier, Brett [mailto:bsaulnier@torys.com]

**Sent:** November 8, 2017 9:42 AM

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

**Cc:** 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka

**Subject:** RE: Fair Hydro -- Master Trust Indenture and Warehouse Supplemental Indenture

Hi all,

Please find attached the latest drafts of the master trust indenture, master transfer and servicing agreement, IESO security agreement and warehouse supplemental indenture. These drafts remain subject to continuing review by OPG and the dealers.

Please let me know if you would like any blacklines in addition to the attached.

Thanks,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

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

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

**Draft Date: November 7, 2017**

**FAIR HYDRO TRUST**

**as Issuer**

**AND**

**BNY TRUST COMPANY OF CANADA**

**as Indenture Trustee**

# TRUST INDENTURE

**DATED AS OF [■], 2017**

## TABLE OF CONTENTS


**Page**

**RECITALS OF THE ISSUER ..... 1**

**AGREEMENT OF THE PARTIES ..... 1**

**ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION ..... 1**

1.01 Definitions ..... 1
1.02 Compliance Certificates and Opinions ..... 2
1.03 Form of Documents Delivered to Indenture Trustee ..... 3
1.04 Actions by Noteholders ..... 3
1.05 Actions of Other Specified Creditors ..... 6
1.06 Effect of Headings and Table of Contents ..... 6
1.07 Successors and Assigns ..... 6
1.08 Severability ..... 6
1.09 Governing Law ..... 6
1.10 Counterparts ..... 6
1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement ..... 7
1.12 Non-Business Days ..... 7
1.13 Interest Act ..... 7
1.14 Currency ..... 7
1.15 References to Acts of the Issuer ..... 7
1.16 Judgment Currency ..... 8

**ARTICLE II COLLATERAL ..... 8**

2.01 Security for Obligations Secured ..... 8
2.02 Recording, Etc ..... 10
2.03 Use of Collateral ..... 11
2.04 Suits To Protect the Collateral ..... 11
2.05 Purchaser Protected ..... 12
2.06 Powers Exercisable by Receiver or Indenture Trustee ..... 12
2.07 Determinations Relating to Collateral ..... 12
2.08 Satisfaction and Discharge of Indenture ..... 12
2.09 Release of all Collateral ..... 13
2.10 Certain Commercial Law Representations and Warranties ..... 14

**ARTICLE III NOTE FORMS ..... 15**

3.01 Forms Generally ..... 15
3.02 Forms of Notes ..... 15
3.03 Form of Indenture Trustee's Certificate of Authentication ..... 15
3.04 Notes Issuable in the Form of a Global Note ..... 16
3.05 Temporary Global Notes and Permanent Global Notes ..... 18
3.06 Beneficial Ownership of Global Notes ..... 20

**TABLE OF CONTENTS**
**(continued)**

**Page**


3.07 Notices to Depository ..... 20
3.08 CUSIP Numbers ..... 20

**ARTICLE IV THE NOTES ..... 21**

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series or Tranche of Notes ..... 21
4.02 Denominations ..... 23
4.03 Execution, Authentication and Delivery and Dating ..... 23
4.04 Temporary Notes ..... 24
4.05 Registration, Transfer and Exchange ..... 24
4.06 Mutilated, Destroyed, Lost and Stolen Notes ..... 28
4.07 Persons Entitled to Payment ..... 29
4.08 Cancellation ..... 30
4.09 Protection of Notes ..... 30
4.10 New Issuances of Notes ..... 30
4.11 Redemption ..... 31

**ARTICLE V CONDITIONS PRECEDENT ..... 31**

5.01 Conditions Precedent for Incurrence of Indebtedness ..... 31
5.02 No Consent ..... 33
5.03 Conditions Precedent for the Incurrence of other Obligations Secured ..... 33
5.04 Acknowledgements ..... 33

**ARTICLE VI SUBORDINATION ..... 34**

6.01 Subordination ..... 34
6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations ..... 34
6.03 Rights of Specified Creditors Preserved ..... 34
6.04 Renewal or Extension of Senior Funding Obligations ..... 35

**ARTICLE VII ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS ..... 35**

7.01 Available Collections ..... 35
7.02 Issuer Accounts ..... 36
7.03 Investment of Funds in the Issuer Accounts ..... 39
7.04 Allocation of Amounts on Deposit in the Collection Account ..... 40
7.05 Allocation of Amounts on Deposit in Interest Accumulation Account ..... 43
7.06 Allocation of Amounts on Deposit in Principal Accumulation Account ..... 44
7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account ..... 45
7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account ..... 45
7.09 Refinancing ..... 47

**TABLE OF CONTENTS**
**(continued)**

**Page**


7.10 Allocation of Amounts on Deposit in the Series Accounts ..... 48
7.11 Payments to be Held in Trust ..... 48
7.12 Application of Trust Money ..... 48

**ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES ..... 48**

8.01 Events of Default ..... 48
8.02 Acceleration of Maturity; Rescission and Annulment ..... 50
8.03 Waiver of Past Defaults ..... 51
8.04 Notice of Defaults ..... 51
8.05 Remedies Generally ..... 52
8.06 Default Interest and Expenses ..... 52
8.07 Indenture Trustee May File Proofs of Claim ..... 53
8.08 Indenture Trustee May Enforce Claims Without Possession of Notes ..... 54
8.09 Indenture Trustee May Elect to Hold the Collateral ..... 54
8.10 Termination by Indenture Trustee of Manager and Servicer ..... 54
8.11 Control by Debtholders ..... 54
8.12 Limitation on Suits ..... 55
8.13 Application of Money Following an Event of Default ..... 55
8.14 Limited Recourse ..... 57
8.15 Restoration of Rights and Remedies ..... 57
8.16 Rights and Remedies Cumulative ..... 58
8.17 Delay or Omission Not Waiver ..... 58
8.18 Waiver of Stay or Extension Laws ..... 58
8.19 Indenture Trustee Appointed Attorney ..... 58
8.20 Disclaimer of Marshalling ..... 59

**ARTICLE IX THE INDENTURE TRUSTEE ..... 59**

9.01 Certain Duties and Responsibilities ..... 59
9.02 Certain Rights of Indenture Trustee ..... 60
9.03 Not Responsible for Recitals or Issuer Funding Obligations ..... 62
9.04 May Hold Notes ..... 62
9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity ..... 62
9.06 Corporate Indenture Trustee Required; Eligibility ..... 63
9.07 Resignation and Removal; Appointment of Successor ..... 63
9.08 Acceptance of Appointment by Successor ..... 65
9.09 Merger, Conversion, Consolidation or Succession to Business ..... 66
9.10 Trust Indenture Legislation ..... 66
9.11 Representations and Covenants of the Indenture Trustee ..... 66
9.12 Indenture Trustee's Application for Instructions from the Issuer ..... 67
9.13 Appointment of Co-Trustee or Separate Indenture Trustee ..... 67
9.14 Preservation of Information; Communications to Debtholders ..... 68
9.15 Acceptance of Trusts by Indenture Trustee ..... 70

**TABLE OF CONTENTS**
**(continued)**

**Page**


9.16 Paying Agent ..... 70

**ARTICLE X MEETINGS ..... 71**

10.01 Conduct of Meetings ..... 71
10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution ..... 73
10.03 Extraordinary Resolution ..... 75
10.04 Declaration by Chairman of Result of Vote ..... 76
10.05 Minutes ..... 76
10.06 Signed Instruments ..... 76
10.07 Persons Who May Attend ..... 76
10.08 Binding Effect of Resolutions ..... 77
10.09 Notes Regarded as Not Outstanding for Certain Purposes ..... 77

**ARTICLE XI SUPPLEMENTAL INDENTURES ..... 77**

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors ..... 77
11.02 Supplemental Indentures and Amendments with Consent of Debtholders ..... 79
11.03 Execution of Amendments and Supplemental Indentures ..... 80
11.04 Effect of Amendments and Supplemental Indentures ..... 80
11.05 Reference in Notes to Supplemental Indentures ..... 81

**ARTICLE XII REPRESENTATIONS AND WARRANTIES OF THE ISSUER ..... 81**

12.01 Representations and Warranties of the Issuer ..... 81

**ARTICLE XIII COVENANTS OF THE ISSUER ..... 83**

13.01 Payment of Principal and Interest ..... 83
13.02 Use of Proceeds ..... 83
13.03 Maintenance of Office or Agency ..... 83
13.04 Legal Existence ..... 84
13.05 Separateness Covenants ..... 84
13.06 Compliance with Laws ..... 85
13.07 Performance of Obligations ..... 85
13.08 Funding Obligations ..... 85
13.09 Financial Statements ..... 85
13.10 Statement as to Compliance ..... 86
13.11 Payment Instruction ..... 86
13.12 Notice of Events of Default ..... 86
13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors ..... 86
13.14 Other Positive Covenants ..... 87
13.15 Rule 144A Information ..... 88
13.16 Further Instruments and Acts ..... 88

**TABLE OF CONTENTS**
**(continued)**

**Page**


13.17 No Other Business ..... 88
13.18 Amendments to Program Agreements ..... 88
13.19 Issuer May Consolidate, Etc., Only on Certain Terms ..... 89
13.20 Successor Substituted ..... 90
13.21 Guarantees, Loans, Advances and Other Liabilities ..... 90
13.22 Capital Expenditures ..... 90
13.23 Restricted Payments ..... 90
13.24 No Borrowing ..... 91
13.25 Other Negative Covenants ..... 91
13.26 Indenture Trustee May Perform Covenants ..... 91

**ARTICLE XIV MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS ..... 92**

14.01 Management Agreement ..... 92
14.02 Credit Enhancement Agreements ..... 92

**ARTICLE XV NOTICES ..... 92**

15.01 Notice to Issuer ..... 92
15.02 Notice to the Indenture Trustee ..... 93
15.03 Notice to Noteholders ..... 93
15.04 Notice to Other Specified Creditors ..... 94
15.05 Notice to Rating Agencies ..... 95
15.06 Change of Address ..... 95

**ARTICLE XVI MISCELLANEOUS ..... 95**

16.01 No Petition ..... 95
16.02 Withholding Rights ..... 95
16.03 U.S. Tax Treatment ..... 95
16.04 Alternate Payment Provisions ..... 96
16.05 Final Distribution ..... 96
16.06 Force Majeure ..... 97
16.07 Delivery of Executed Copies ..... 97

**SCHEDULE A — DEFINED TERMS**
**EXHIBIT 1 — FORM OF PAYMENT INSTRUCTIONS**
**EXHIBIT 2 — FORM OF REFINANCING NOTICE**

This **TRUST INDENTURE**, between **COMPUTERSHARE TRUST COMPANY OF CANADA** in its capacity as trustee of **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), and **BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee[1] (the "**Indenture Trustee**"), is made and entered into as of [■], 2017.

## RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of Issuer Funding Obligations in one or more Classes, Series or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

(c) unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;

[1] This draft does not reflect any comments from the Indenture Trustee.

(d) references to an agreement shall mean such agreement, as amended, modified, restated and supplemented from time to time in accordance with the provisions hereof;

(e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Compliance Certificates and Opinions**

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Article V and this Section 1.02, as applicable, in connection with the authentication of Notes of such Series or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

**1.03 Form of Documents Delivered to Indenture Trustee**

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**1.04 Actions by Noteholders**

(a) Any request, demand, authorization, direction, notice, consent, resolution, waiver or other action (collectively, an "**Action**") provided by this Indenture to be given or taken by Noteholders of any Class, Series or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. In addition, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Noteholders duly called and held in accordance with the provisions

of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

(b) The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may be proved in any manner which the Indenture Trustee deems sufficient.

(c) (i) The ownership of Registered Notes will be proved by the Note Register.

(ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.

(d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

(e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent

list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.

(f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.

(g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.

(h) Without limiting the generality of the foregoing, unless otherwise specified pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than six months days after such record date.

### 1.05 Actions of Other Specified Creditors

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

### 1.06 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

### 1.08 Severability

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

### 1.09 Governing Law

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

### 1.10 Counterparts

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

### 1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

### 1.12 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.13 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

### 1.14 Currency

Unless stated otherwise, all amounts herein are stated in Dollars.

### 1.15 References to Acts of the Issuer

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

**1.16 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.

(b) The term "**rate of exchange**" in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## COLLATERAL

**2.01 Security for Obligations Secured**

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

(a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:

(i) the Issuer Investment Interest;

(ii) each Issuer Account (including all Sub-Accounts of each Issuer Account);

(iii) all Eligible Investments and all investment property, money and other property held in the Issuer Accounts (including any Sub-Accounts of each Issuer Account);

(iv) all rights, benefits and powers of the Issuer under any Program Agreement;

(v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;

(vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;

(vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;

(viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;

(ix) all amounts received with respect to all of the foregoing; and

(x) all proceeds of the foregoing; and

(b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the "**Collateral**".

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified

Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

**2.02 Recording, Etc.**

(a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.

(b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.

(c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:

(i) grant the Security Interest more effectively in all or any portion of the Collateral;

(ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;

(iv) enforce its rights under the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

(vi) pay all Taxes levied or assessed upon the Collateral when due.

(d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.

(e) Without limiting the generality of subsection 2.02(c) or (d):

(i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.

(ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

**2.03 Use of Collateral**

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

**2.04 Suits To Protect the Collateral**

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral

(including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

**2.05 Purchaser Protected**

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

**2.06 Powers Exercisable by Receiver or Indenture Trustee**

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

**2.07 Determinations Relating to Collateral**

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05). The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

**2.08 Satisfaction and Discharge of Indenture**

(a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any Class, Series or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every Class, Series or Tranche of Funding Obligations as to which it seeks to discharge this Indenture or, if for any other purpose, all sums

so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.

(b) This Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Funding Obligations (except as to any surviving rights of transfer or exchange of Notes of that Class, Series or Tranche expressly provided for herein or in any form of Note for that Class, Series or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that Class, Series or Tranche, when:

(i) all Notes of that Class, Series or Tranche theretofore outstanding (other than (A) Notes of that Class, Series or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 16.05(b), and (B) Funding Obligations of that Class, Series or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section 16.05(b)) have been delivered to the Indenture Trustee for cancellation or been cancelled;

(ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the Funding Obligations of that Class, Series or Tranche; and

(iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that Class, Series or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Class, Series or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that Class, Series or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections 7.12 and 16.05(b) will survive such satisfaction and discharge.

## 2.09 Release of all Collateral

(a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the

provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.

(b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.

(c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

## 2.10 Certain Commercial Law Representations and Warranties

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

(a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

(b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).

(c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.

(d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

## ARTICLE III
## NOTE FORMS

### 3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any Class, Series or Tranche, to the rules of any securities exchange on which such Notes are listed.

### 3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

### 3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the Class, Series or Tranche designated therein referred to in the within-mentioned Indenture.

**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee,

By: _____

Authorized Signatory

Dated: _____

**3.04 Notes Issuable in the Form of a Global Note**

(a) If the Issuer establishes that the Notes of a particular Class, Series or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such Class, Series or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to Fair Hydro Trust (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("**CDS**"), to Fair Hydro Trust (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the

registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note", and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

(b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.

(c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:

(i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such Class, Series or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or ceases to be a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such Class, Series or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such Class, Series or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.

(ii) The Issuer may at any time and in its sole discretion determine that the Notes of any Class, Series or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such Class, Series or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such Class, Series or Tranche

of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such Class, Series or Tranche or portion thereof in exchange for such Global Note or Notes.

(iii) If any Event of Default has occurred and is continuing and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of all Series advise the Indenture Trustee and the Depository that Global Notes are no longer in the best interest of the Noteholders, the holders of Global Notes may exchange such Notes for individual Notes.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

**3.05 Temporary Global Notes and Permanent Global Notes**

(a) If specified in the Related Supplemental Indenture for any Series, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the "**Temporary Global Note**"), without interest coupons, in the denomination of the entire aggregate principal amount of such Series and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the "**Permanent Global Notes**").

(b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not

prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

(c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.

(d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

### 3.06 Beneficial Ownership of Global Notes

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

(a) the Issuer and the Indenture Trustee may deal with the applicable Depository and the Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and

(b) the rights of the respective Note Owners will be exercised only through the Depository and the Depository's participants. Unless and until Notes in definitive form are issued pursuant to Section 3.04, the Depository will make book-entry transfers among the Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such Depository's participants in accordance with the Depository's applicable procedures from time to time.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the Depository and the Depository's participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes in accordance with the applicable procedures of the Depository.

### 3.07 Notices to Depository

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

### 3.08 CUSIP Numbers

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

## ARTICLE IV
## THE NOTES

**4.01 General Title, General Limitations, Issuable in Series, Terms of a Series or Tranche of Notes**

(a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.

(b) The Notes of any Class may be issued in one or more Series or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.

(c) The Classes of Notes are as set forth in this Indenture. Each Note issued must be part of a Class and Series of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.

(d) Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Series of Notes belong to different Tranches, all Notes of such Series, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the Series of Notes.

(e) Each Series of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single Series of a Class will belong to different Tranches if they have different terms and conditions. With respect to any Series of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.

(f) Before the initial issuance of Notes of each Series or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

(i) The Class in respect of such Series;

(ii) the Series designation;

(iii) the Stated Principal Amount of the Notes;

(iv) whether such Notes are of a particular Tranche of Notes;

(v) the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;

(vi) the price or prices at which such Series or Tranche of Notes will be issued;

(vii) the times at which such Series or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;

(viii) the rate per annum at which such Series or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;

(ix) each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series or Tranche of Notes;

(x) the Principal Accumulation Date for such Series of Notes;

(xi) the Principal Accumulation Amounts for such Series of Notes;

(xii) the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific Dollar Principal Amount, as applicable, of such Series or Tranche of Notes;

(xiii) whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;

(xiv) any Events of Default with respect to such Series or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series or Tranche);

(xv) if such Series or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;

(xvi) if such Series or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series or Tranche of Notes are to be issued with or without coupons or both;

(xvii) **[if such Series or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;]**

(xviii) if such Series or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;

(xix) the Record Date for any Payment Date of such Series or Tranche of Notes, if different from the last day of the month before the related Payment Date;

(xx) whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche; and

(xxi) any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

(g) The Notes of each Class, Series or Tranche will be distinguished from the Notes of each other Class, Series or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.

(h) Any terms or provisions in respect of the Notes of any Class, Series or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

**4.02 Denominations**

The Notes of each Series or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series or Tranche, the Registered Notes of that Series or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series or Tranche, the Bearer Notes of that Series or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

**4.03 Execution, Authentication and Delivery and Dating**

(a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.

(b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.

(d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

(e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.

(f) Unless otherwise provided in the form of Note for any Series or Tranche, all Notes will be dated the date of their authentication.

(g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

**4.04 Temporary Notes**

(a) Pending the preparation of definitive Notes of any Series or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.

(b) If temporary Notes of any Series or Tranche are issued, the Issuer will cause definitive Notes of such Series or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series or Tranche will be exchangeable for definitive Notes of such Series or Tranche upon surrender of the temporary Notes of such Series or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series or Tranche.

**4.05 Registration, Transfer and Exchange**

(a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of

Registered Notes of a particular Class, Series or Tranche, and for transfers of Registered Notes or of Registered Notes of such Class, Series or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

(b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any Class, Series or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such Class, Series or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.

(c) Subject to Section 3.04, at the option of the Noteholder, Notes of any Class, Series or Tranche may be exchanged for other Notes of such Class, Series or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same Class, Series and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.

(d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.

(f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

(g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any Class, Series or Tranche during a period beginning at the opening of business 15 days before the day of selection of Notes of such Class, Series or Tranche to be redeemed and ending at the close of business on (A) if Notes of such Class, Series or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such Class, Series or Tranche so selected for redemption or (B) if Notes of the Class, Series or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the Class, Series or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.

(h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.

(i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.

(j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any Class, Series or Tranche of Notes issued under this Indenture.

(k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code ("**Similar Law**"); or (ii) (A) the Note is rated at least "BBB-" or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

**4.06 Mutilated, Destroyed, Lost and Stolen Notes**

(a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, Class, Series or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same Class, Series or Tranche duly issued hereunder.

(e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**4.07 Persons Entitled to Payment**

(a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).

(b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.

(c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.

(d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.

(e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.

(f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

(g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so)

to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

**4.08 Cancellation**

All Notes surrendered for payment, redemption, repurchase, transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

**4.09 Protection of Notes**

(a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.

(b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

**4.10 New Issuances of Notes**

(a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding Series or Tranche of a Class of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding Series or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that Series or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a Series or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a Series or Tranche of

Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit of the additional Notes.

(b) When issued, the additional Notes of a Series or Tranche will be identical in all respects to the other Outstanding Notes of that Series or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related Supplemental Indenture as the other Outstanding Notes of that Series or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

## 4.11 Redemption

**[NTD: redemption mechanics to be included.]**

# ARTICLE V
# CONDITIONS PRECEDENT

## 5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:

(i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;

(iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;

(v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;

(d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;

(e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable Series or Tranche of Notes;

(f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;

(g) the Change of Law Protection Agreement shall be in full force and effect against the Province or has been replaced with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations pursuant to an Ordinary Resolution;

(h) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;

(i) in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;

(j) in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code),

then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and

(k) in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

**5.02 No Consent**

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

**5.03 Conditions Precedent for the Incurrence of other Obligations Secured**

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and

(b) each counterparty to such agreement (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

**5.04 Acknowledgements**

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

## ARTICLE VI
## SUBORDINATION

### 6.01 Subordination

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

### 6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations

(a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.

(b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

### 6.03 Rights of Specified Creditors Preserved

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding

Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

### 6.04 Renewal or Extension of Senior Funding Obligations

(a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.

(b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

## ARTICLE VII
## ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

### 7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

**7.02 Issuer Accounts**

(a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Collection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the "Collection Account."

(b) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Interest Accumulation Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Interest Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Interest Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Interest Accumulation Account to such new Interest Accumulation Account. From the date each such new Interest Accumulation Account is established, it shall be the "Interest Accumulation Account." The Interest Accumulation Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(c) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Principal Accumulation Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Principal Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer

period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Principal Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Principal Accumulation Account to such new Principal Accumulation Account. From the date each such new Principal Accumulation Account is established, it shall be the "Principal Accumulation Account." The Principal Accumulation Account is a "capital account" under, and as defined under, the Fair Hydro Regulations.

(d) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Program Cash Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Program Cash Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Program Cash Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Program Cash Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Program Cash Reserve Account to such new Program Cash Reserve Account. From the date each such new Program Cash Reserve Account is established, it shall be the "Program Cash Reserve Account." The Program Cash Reserve Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(e) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Refinancing Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the "Refinancing Account."

(f) From time to time in connection with the creation of any Series of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible

Deposit Account (a "**Series Capital Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account shall be credited to a Series Capital Reserve Account, to the extent that there is a requirement for funds in such Series Capital Reserve Account, in accordance with the terms of the applicable Funding Obligation Agreement and Section 7.04. Each Series Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Series Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Series Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Series Capital Reserve Account. From the date each such new Series Capital Reserve Account is established, it shall be a "Series Capital Reserve Account." Each Series Capital Reserve Account shall be a "capital account" under, and as defined under, the Fair Hydro Act Regulations.

(g) From time to time in connection with the creation of any Series of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Series Finance Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Series Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for a Series of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account shall be credited to a Series Finance Reserve Account, to the extent that there is a requirement for funds in such Series Finance Reserve Account, in accordance with the terms of the applicable Funding Obligation Agreement and Section 7.04. Each Series Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Series Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Series Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Series Finance Reserve Account. From the date each such

new Series Finance Reserve Account is established, it shall be a "Series Finance Reserve Account." Each Series Finance Reserve Account shall be a "finance reserve account" under, and as defined under, the Fair Hydro Act Regulations.

**7.03 Investment of Funds in the Issuer Accounts**

(a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.

(b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.

(c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.

(d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections 7.05 to 7.10.

(e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.

(f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided,

however, that such funds shall remain uninvested upon the occurrence of any of the following events:

(i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or

(ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

**7.04 Allocation of Amounts on Deposit in the Collection Account**

(a) All Senior Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series or Tranche, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series or Tranche, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement.

(b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).

(c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

(d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.

(e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:

(i) First, to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(ii) Second, to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[2] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(iii) Third, on a *pro rata* basis (A) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(iv) Fourth, on a *pro rata* basis (A) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(v) Fifth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Senior Funding Obligations,

(vi) Sixth, to deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Senior);

(vii) Seventh, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement, other than any Series Capital Account or Series Finance Reserve Account related solely to

[2] To be confirmed.

Subordinated Funding Obligations or Junior Subordinated Funding Obligations;

(viii) Eighth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

(ix) Ninth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(x) Tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date,

(xi) Eleventh, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Subordinated Funding Obligations;

(xii) Twelfth, to deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Subordinated);

(xiii) Thirteenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement related solely to Subordinated Funding Obligations;

(xiv) Fourteenth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date,

(xv) Fifteenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date,

(xvi) Sixteenth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Junior Subordinated Funding Obligations;

(xvii) Seventeenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Accounts or Series Finance Reserve Accounts as required by any Related Funding Obligation Agreement related solely to Junior Subordinated Funding Obligations;

(xviii) Eighteenth, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(xix) Nineteenth, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than $100 in any Monthly Period;

(xx) Twentieth, on a *pro rata* basis (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity; and

(xxi) Twenty-First, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

### 7.05 Allocation of Amounts on Deposit in Interest Accumulation Account

Subject to Sections 7.07 and 8.13, on each Interest Payment Date, any amount on deposit in the Interest Accumulation Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Interest Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on the Senior Funding Obligations on such Interest Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Subordinated Funding Obligations shall be made under this Section 7.05(b) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Interest Payment Date, and (y) the amount on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of the Interest Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Junior Subordinated Funding Obligations shall be made under this Section 7.05(c) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and the Subordinated Funding Obligations as of such Interest Payment Date; and (y) the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation

Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Interest Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the succeeding Interest Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full including all interest thereon any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Interest Accumulation Account shall be applied in accordance with Section 8.13.

### 7.06 Allocation of Amounts on Deposit in Principal Accumulation Account

Subject to Section 8.13, on each Principal Payment Date, any amount on deposit in the Principal Accumulation Account and any amounts transferred pursuant to Section 7.07 will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Principal Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Junior Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Junior Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the succeeding Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Principal Accumulation Account shall be applied in accordance with Section 8.13.

**7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account**

(a) If on any Principal Payment Date, the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations and Subordinated Funding Obligations payable on such Principal Payment Date (the deficiency being a "**Subordinated/Senior Principal Shortfall**"), an amount equal to the lesser of:

(i) the Subordinated/Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and Subordinate Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

(b) If on any Principal Payment Date after making any transfer contemplated by subsection 7.07(a), the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date (the deficiency being a "**Senior Principal Shortfall**"), an amount equal to the lesser of:

(i) the Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

**7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account**

(a) On each Interest Payment Date, amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Interest Accumulation Account is less than the amount of interest due and payable on the Senior Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Senior Funding Obligations on such Interest Payment Date,

(ii) Secondly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(b) is less than the amount of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(c) is less than the amount of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(b) On each Principal Payment Date (and if the Principal Payment Date is also an Interest Payment Date, after making the applications provided for in subsection 7.08(a) and Section 7.07), amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Principal Accumulation Account is less than the amount of principal due and payable on the Senior Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Senior Funding Obligations on such Principal Payment Date;

(ii) Secondly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(b) is less than the amount of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(c) is less than the amount of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall

be applied to the payment of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(c) Any amounts remaining after making the applications referred to in subsection 7.08(a) and subsection 7.08(b): (i) to be held in the Program Cash Reserve Account for distribution under this Section 7.08 on the succeeding Interest Payment Date or Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Program Cash Reserve Account shall be applied in accordance with Section 8.13.

**7.09 Refinancing**

(a) Not less than [30] days prior the first day of the Reference Period that includes the Principal Accumulation Date in respect of a Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, the Issuer shall, if it intends to repay all or a portion of the principal obligations of such Funding Obligation Agreement pursuant to a Refinancing, issue a Refinancing Notice to the Indenture Trustee.

(b) On completion of a Refinancing all proceeds received by the Issuer shall be deposited to the Refinancing Account.

(c) On each Payment Date, an amount shall be transferred from the Refinancing Account to the Principal Accumulation Account equal to the lesser of:

(i) The amount on deposit in the Refinancing Account; and

(ii) The Deferred Principal Accumulation Amount.

(d) After the final Issuer Funding Obligation has been repaid in full, any amounts remaining in the Refinancing Account shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts remaining in the Refinancing Account shall be applied in accordance with Section 8.13.

### 7.10 Allocation of Amounts on Deposit in the Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to Specified Creditors in accordance with the terms of the Related Funding Obligations Agreement.

### 7.11 Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

### 7.12 Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

## ARTICLE VIII
## EVENTS OF DEFAULT AND REMEDIES

### 8.01 Events of Default

**[NTD: to be determined if certain events of default should be triggered on a series by series basis.]**

"**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of [5] days following the date on which such interest became due and payable;

(b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;

(c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of 60 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of 60 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) an Insolvency Event in respect of the Issuer;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within 10 days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;

(g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or

(h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

**8.02 Acceleration of Maturity; Rescission and Annulment**

**[NTD: to be determined if acceleration should be determined on a series by series basis.]**

(a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

(b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will automatically and immediately be obligated to pay off the Issuer Funding Obligations.

(c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its

agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and

(ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.

(d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

(e) No such rescission will affect any subsequent default or impair any right consequent thereon.

**8.03 Waiver of Past Defaults**

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

**8.04 Notice of Defaults**

(a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:

(i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;

(ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;

(iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and

(iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

(b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

**8.05 Remedies Generally**

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

**8.06 Default Interest and Expenses**

The Issuer covenants that if:

(a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or

(b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and

upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

### 8.07 Indenture Trustee May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and

(b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of

any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

**8.08 Indenture Trustee May Enforce Claims Without Possession of Notes**

All rights of action and claims under this Indenture or the Notes of any Class, Series or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such Class, Series or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

**8.09 Indenture Trustee May Elect to Hold the Collateral**

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

**8.10 Termination by Indenture Trustee of Manager and Servicer**

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

**8.11 Control by Debtholders**

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

(a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and

(b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

## 8.12 Limitation on Suits

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

(a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;

(c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

## 8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

(a) First, to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) Second, to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[3] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

[3] To be confirmed.

(c) Third, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;

(d) Fourth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;][4]

(e) Fifth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(f) Sixth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(g) Seventh, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

(h) Eighth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

(i) Ninth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;

(j) Tenth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

(k) Eleventh, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;

(l) Twelfth, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(m) Thirteenth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity

[4] Subject to ongoing discussion.

amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;

(n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in a Series Account established solely for the benefit of one or more Series of Issuer Funding Obligations shall first be used to satisfy all obligations owing to those Specified Creditors for whom such Series Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

## 8.14 Limited Recourse

(a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.

(b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).

(c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

## 8.15 Restoration of Rights and Remedies

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this

Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

### 8.16 Rights and Remedies Cumulative

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

### 8.17 Delay or Omission Not Waiver

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

### 8.18 Waiver of Stay or Extension Laws

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

### 8.19 Indenture Trustee Appointed Attorney

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

(a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;

(b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and

(c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

**8.20 Disclaimer of Marshalling**

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

## ARTICLE IX
## THE INDENTURE TRUSTEE

**9.01 Certain Duties and Responsibilities**

(a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);

(ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

(iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

**9.02 Certain Rights of Indenture Trustee**

Except as otherwise provided in Section 9.01:

(a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;

(h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;

(j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;

(l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

(m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

**9.03 Not Responsible for Recitals or Issuer Funding Obligations**

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

**9.04 May Hold Notes**

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

**9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity**

(a) The Issuer agrees:

(i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as BNY Trust Company of Canada is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and

(iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

(b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

**9.06 Corporate Indenture Trustee Required; Eligibility**

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

**9.07 Resignation and Removal; Appointment of Successor**

(a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.

(b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(d) If at any time:

(i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

(ii) the Indenture Trustee becomes incapable of acting, or

(iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

(f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after

such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.

(h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

**9.08 <u>Acceptance of Appointment by Successor</u>**

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

**9.09 Merger, Conversion, Consolidation or Succession to Business**

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

**9.10 Trust Indenture Legislation**

(a) In this Article IX, the term "**applicable legislation**" means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.

(b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.

(c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

**9.11 Representations and Covenants of the Indenture Trustee**

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;

(c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

**9.12 Indenture Trustee's Application for Instructions from the Issuer**

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

**9.13 Appointment of Co-Trustee or Separate Indenture Trustee**

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any relevant jurisdiction, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.

(b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any

particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

**9.14 Preservation of Information; Communications to Debtholders**

(a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).

(b) If three or more Debtholders of any Class, Series or Tranche (hereinafter referred to as "**applicants**") (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such Class, Series or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or

(ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable Classes, Series and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

(c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

## 9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

## 9.16 Paying Agent

(a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

(b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.

(c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:

(i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;

(ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;

(iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest

owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;

(v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and

(vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on any amounts contemplated under this Indenture of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

## ARTICLE X
## MEETINGS

### 10.01 Conduct of Meetings

Meetings of Debtholders of any Class, Series or Tranche, of all Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

(a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular Class, Series or Tranche, of all Issuer Funding Obligations, **[of Controlling Class Obligations of a Series]** or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"), as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that Debtholder Group, convene a meeting of the Debtholders of that Debtholder Group. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting

and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.

(b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the applicable Debtholder Group to which such meeting relates and to the Issuer, unless the meeting has been called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

(c) At any meeting of a Debtholders Group, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the Issuer Funding Obligations of the applicable Debtholder Group entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that Debtholder Group then and there represented in person or by proxy and entitled to vote at such meeting.

(d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.

(e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the Debtholder Group. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of

which he or she shall be the Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of the applicable Debtholder Group. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

**10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution**

(a) In addition to any powers hereinbefore given, Debtholders of a Class, Series or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:

(i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such Class, Series or Tranche or by the Related Funding Obligation Agreement;

(ii) sanction, insofar as they apply to the Class, Series or Tranche, the release of the Issuer from its covenants and obligations hereunder;

(iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such Class, Series or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such Class, Series or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;

(iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the Class, Series or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized by such Ordinary Resolution; provided that no such assent shall be

necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

(v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a Class, Series or Tranche of Issuer Funding Obligations.

(b) In addition to any powers hereinbefore given, Debtholders of the Controlling Class Obligations shall by Extraordinary Resolution have the power to:

(i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

(ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;

(iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;

(iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

(v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

(vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;

(vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own

account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

(viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and

(x) permit the creation of any Lien on the Collateral that is prior to the Security Interest.

(c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

**10.03 Extraordinary Resolution**

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective

heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a Debtholder Group which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

**10.04 Declaration by Chairman of Result of Vote**

At any meeting of the Debtholders of any Debtholder Group in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

**10.05 Minutes**

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

**10.06 Signed Instruments**

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a Debtholder Group, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

**10.07 Persons Who May Attend**

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

**10.08 Binding Effect of Resolutions**

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a Debtholder Group will be binding upon all of the Debtholders of such Debtholder Group whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such Debtholder Group, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

**10.09 Notes Regarded as Not Outstanding for Certain Purposes**

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular Class, Series or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that Class, Series or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that Class, Series or Tranche.

## ARTICLE XI
## SUPPLEMENTAL INDENTURES

**11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors**

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or

(b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations; or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(d) to provide for the issuance of any Series or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche; or

(e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or

(f) to add any additional Events of Default in respect of any or all Classes, Series or Tranches of Issuer Funding Obligations; or

(g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or

(h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or

(i) to provide for additional forms of Credit Enhancement for any Class, Series or Tranche of Issuer Funding Obligations; or

(j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or

(k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or

(l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture

Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

**11.02 Supplemental Indentures and Amendments with Consent of Debtholders**

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such Class, Series or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

(a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;

(b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

(c) reduce the amount of a Discount Note payable upon its acceleration;

(d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;

(e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;

(f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or

(g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Classes, Series or Tranches of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such Class, Series or Tranche with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other Class, Series or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

**11.03 Execution of Amendments and Supplemental Indentures**

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section 9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

**11.04 Effect of Amendments and Supplemental Indentures**

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each Class, Series or Tranche of Issuer Funding Obligations

affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

### 11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

## ARTICLE XII
## REPRESENTATIONS AND WARRANTIES OF THE ISSUER

### 12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular Class, Series or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

(a) The Issuer is a Financing Entity.

(b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.

(c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.

(d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in

effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.

(f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.

(g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.

(h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in

connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

## ARTICLE XIII
## COVENANTS OF THE ISSUER

### 13.01 Payment of Principal and Interest

With respect to each Class, Series or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

### 13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

### 13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more Classes, Series or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any Class, Series or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints the Indenture Trustee, as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

**13.04 Legal Existence**

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

**13.05 Separateness Covenants**

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

(a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);

(b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;

(c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;

(e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;

(f) prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;

(g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;

(h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

(i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;

(j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and

(k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

**13.06 Compliance with Laws**

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

**13.07 Performance of Obligations**

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.

(b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.

(c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

**13.08 Funding Obligations**

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

**13.09 Financial Statements**

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited financial statements of the Issuer

for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, unaudited financial statements of the Issuer for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.

**13.10 Statement as to Compliance**

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

(a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and

(b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year and that no Event of Default has occurred (without regard to any grace period or requirement of notice), or, if there has been a material default in the fulfillment of any such condition or covenant or an Event of Default has occurred (without regard to any grace period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

**13.11 Payment Instruction**

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

**13.12 Notice of Events of Default**

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

**13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors**

(a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:

(i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such Classes, Series or Tranches as of such date, and

(ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.

(b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

**13.14 Other Positive Covenants**

The Issuer will:

(a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;

(b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;

(c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute

and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

(d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

**13.15 Rule 144A Information**

For so long as Notes of any Class, Series or Tranche are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to provide to any Noteholder of such Class, Series or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

**13.16 Further Instruments and Acts**

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

**13.17 No Other Business**

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

**13.18 Amendments to Program Agreements**

(a) The Issuer will not:

(i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted

by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or

(ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.

(b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

**13.19 Issuer May Consolidate, Etc., Only on Certain Terms**

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a "**transaction**"), unless:

(a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;

(b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

(c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;

(d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and

(e) any action that is necessary to maintain the Security Interest shall have been taken.

**13.20 Successor Substituted**

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

**13.21 Guarantees, Loans, Advances and Other Liabilities**

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

**13.22 Capital Expenditures**

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

**13.23 Restricted Payments**

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

**13.24 No Borrowing**

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

**13.25 Other Negative Covenants**

The Issuer will not:

(a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);

(b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;

(c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;

(e) release any security or guarantee in respect of the Collateral;

(f) voluntarily dissolve or liquidate; or

(g) take any action that would cause it to be treated as engaged in a "trade or business within the United States" within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

**13.26 Indenture Trustee May Perform Covenants**

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the

Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

## ARTICLE XIV
## MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

### 14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

### 14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

## ARTICLE XV
## NOTICES

### 15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day

receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as
Issuer Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1

Attention: [■]
Fax: (416) [■]
Email: [■]

**15.02 Notice to the Indenture Trustee**

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

BNY Trust Company of Canada
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

Attention: Corporate Trust Services
Fax: (416) 360-1711

**15.03 Notice to Noteholders**

(a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination

outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.

(b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any Class, Series or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.

(c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.

(d) With respect to any Series or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series or Tranche.

(e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

### 15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

### 15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

### 15.06 Change of Address

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

## ARTICLE XVI
## MISCELLANEOUS

### 16.01 No Petition

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

### 16.02 Withholding Rights

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

### 16.03 U.S. Tax Treatment

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

**16.04 Alternate Payment Provisions**

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

**16.05 Final Distribution**

(a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any Class, Series or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such Class, Series or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such Class, Series or Tranche specifying (i) the date upon which final payment of such Class, Series or Tranche will be made upon presentation and surrender of Notes of such Class, Series or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.

(b) Notwithstanding a final distribution to the Noteholders of any Class, Series or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any Series Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any Series Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the

money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

**16.06 Force Majeure**

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**16.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Indenture.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee and not in its individual capacity

By: _____

Name:
Title:

**Schedule A**
**DEFINED TERMS**

"**Act**" means *Ontario Fair Hydro Plan Act, 2017*.

"**Action**" has the meaning specified in Section 1.04.

"**Adverse Effect**" means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to this Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the Security Interest and the rights and remedies of the Indenture Trustee in respect thereof.

"**Affected Party**" has the meaning specified in the applicable Derivative Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

"**Authorized Newspaper**" means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any Class, Series or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

"**Available Collections**" means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section **[3.3]** of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in any Issuer Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; (b) the IESO Carrying Cost Payments; and (c) amounts received by the Issuer pursuant to Derivative Agreements.

"**Bearer Note**" means a Note in bearer form.

"**Benefit Plan**" means an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a "plan" described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" by reason of an employee benefit plan's investment in the entity.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

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

"**Canadian Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

"**Certificate of Authentication**" means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

"**Chairman**" has the meaning specified in subsection 10.01(d).

"**Change of Law Protection Agreement**" means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

"**Class**" or "**Class of Issuer Funding Obligations**" means the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations **[and the Derivative Funding Obligations]**, each of which shall be a class of Issuer Funding Obligations.

"**Closing Date**", with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

"**Collateral**" has the meaning specified in Section 2.01.

"**Collection Account**" has the meaning specified in subsection 7.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Controlling Class Obligations** means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at One York Street, 6th Floor, Toronto, Ontario M5J 0B6, or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

"**Credit Enhancement**" means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as "Credit Enhancement" for purposes hereof.

"**Credit Enhancement Agreement**" means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

"**Credit Enhancer**" means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

"**DBRS**" means DBRS Limited, or any successor thereof.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning specified in subsection 10.01(a)

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Issuer was established.

"**Defaulting Party**" has the meaning specified in the applicable Derivative Agreement.

"**Deferred Principal Accumulation Amount**" means, on any Payment Date, the amount by which the aggregate of the Principal Accumulation Amount (Senior), the Principal Accumulation Amount (Subordinated) and the Principal Accumulation Amount (Junior Subordinated) for such Payment Date determined without reference to any Refinancing Notices is greater than the amount on deposit in the Principal Accumulation Account.

"**Depository**" means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

"**Derivative Counterparty**" means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, Derivative Agreements.

"**Discount Note**" means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

"**Dollar**," "**$**" or "**Cdn. $**" means Canadian dollars.

"**Electronic Methods**" means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

"**Eligible Deposit Account**" means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's and, if DBRS provides a rating

thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody's, S&P and DBRS, if rated by DBRS;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this definition as a "broker/dealer"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A1" from Moody's and also has a long-term unsecured debt rating of at least "A" from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to

3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's; and (3) no securities or investments described in clauses (b) through (d) above that have maturities of more than 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's.

"**ERISA**" means the *Employee Retirement Income Security Act* of 1974, as amended.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Date**" means, with respect to any Class, Series or Tranche of Notes, the latest of:

(a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;

(b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and

(c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

"**Extraordinary Resolution**" means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Indenture.

"**Fair Hydro Regulations**" means the regulations made under the Act including Ontario regulations 206/17 and 195/17

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Indenture.

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act as of the date of this Indenture.

"**Financing Plan**" has the meaning ascribed to the term "financing plan" in the Act as of the date of this Indenture.

"**Foreign Currency**" means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

"**Foreign Currency Note**" means a Note denominated in a Foreign Currency.

"**Foreign Depository**" means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

"**Funding Obligation Agreement**" means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Indenture.

"**Global Note**" means any Note issued pursuant to Section 3.04.

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

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

"**IESO Carrying Cost Payments**" means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Indenture**" or "**this Indenture**" means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" means and includes such Person.

"**Initial Currency Specific Dollar Principal Amount**" means with respect to a Series or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

"**Initial Dollar Principal Amount**" means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a Class, Series or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such Class, Series or Tranche plus the aggregate initial principal amount of any additional Notes of such Class, Series or Tranche, and (b) with

respect to a Class, Series or Tranche of Discount Notes that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(xiii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(a).

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(iii)(A).

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(viii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(b).

"**Interest Accumulation Account**" has the meaning specified in subsection 7.02(b).

"**Interest Payment Date**" means each Business Day which is an "Interest Payment Date" in respect of any Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Internal Revenue Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act as of the date of this Indenture.

"**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Indenture.

"**Issuer**" has the meaning specified in the first paragraph of this Indenture.

"**Issuer Accounts**" means, collectively, the Program Accounts and the Series Accounts and including any Sub-Accounts thereof.

"**Issuer Certificate**" means a certificate (including an Officer's Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

"**Issuer Funding Obligations**" means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

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

"**Junior Subordinated Borrowings**" means Borrowings that have been designated as "Junior Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

"**Junior Subordinated Notes**" means Notes of a Series that have been designated as "Junior Subordinated Notes" in the Related Supplemental Indenture.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

"**Liquidity Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a "Liquidity Agreement" for the purposes hereof.

"**Loan Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Issuer.

"**Manager**" means OPG, in its capacity as manager of the Issuer under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Monthly Period**" means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

"**Moody's**" means Moody's Investors Service, Inc., or any successor thereof.

"**Non-resident**" means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

"**Note**" or "**Notes**" means any note or notes of any Class, Series or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

"**Noteholder**" means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

"**Note Owner**" means the beneficial owner of an interest in a Global Note.

"**Note Purchase Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

"**Note Register**" has the meaning specified in subsection 4.05(a).

"**Note Registrar**" means the Person who keeps the Note Register.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**Officer's Certificate**" means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer's knowledge and belief.

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

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

"**Ordinary Resolution**" has the meaning specified in subsection 10.01(e).

"**Outstanding**" means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;

(b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if

required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and

(c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to "Notes" will be deemed to be references to "Outstanding Notes". In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, Senior Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only Senior Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. Senior Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee's right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

"**Outstanding Currency Specific Dollar Principal Amount**" means at any time, with respect to any Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such Series or Tranche at such time, less the amount of any payments of principal to the holders of such Series of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such Series of Notes due to the issuance of additional Notes of such Series.

"**Outstanding Dollar Principal Amount**" means at any time:

(a) in respect of Notes, either:

(i) with respect to any Class, Series or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such Class, Series or Tranche at such time, less the amount of any payments of principal to the holders of such Class, Series or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or

(ii) with respect to any Series or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series or Tranche or the applicable Derivative Counterparty, each pursuant to the Related Supplemental Indenture;

plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such Class, Series or Tranche of Notes due to the issuance of additional Notes of such Class, Series or Tranche pursuant to Article V; and

(b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

"**Payment Date**" means the 15th day of each calendar month.

"**Payment Instruction**" means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

"**Permanent Global Note**" has the meaning specified in subsection 3.05(a).

"**Permitted Liens**" means:

(a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;

(b) the Lien of any Indenture Trustee, as provided in Section 9.05;

(c) the Security Interest; and

(d) any Lien created pursuant to a Co-Owner Agreement.

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

"**Place of Payment**" means, with respect to any Class, Series or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such Class, Series or Tranche of Notes in accordance with the provisions of Article V.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario).

"**Predecessor Notes**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"**Principal Accumulation Account**" has the meaning specified in subsection 7.02(c).

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date occurring on or after the Principal Accumulation Date for such Series, the amount specified for such Payment Date in the Funding Obligation Agreement in respect of such Series plus any amounts specified in the Funding Obligation Agreement in respect of such Series in respect of prior Payment Dates after the Principal Accumulation Date for such Series which were not deposited to the Principal Accumulation Account; *provided* that if the Issuer has delivered a Refinancing Notice in respect of such Series pursuant to Section 7.09, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such Refinancing Notice.

"**Principal Accumulation Amount (Junior Subordinated)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Junior Subordinated Funding Obligations for such Payment Date.

"**Principal Accumulation Amount (Senior)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Senior Funding Obligations for such Payment Date.

"**Principal Accumulation Amount (Subordinated)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Subordinated Funding Obligations for such Payment Date.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each Business Day which is a "Principal Payment Date" under a Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Principal Payment Due Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account and the Refinancing Account.

"**Program Agreements**" means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning specified in subsection 7.02(g).

"**Program Cash Reserve Balance**" means, at any time, the amount on deposit in the Program Cash Reserve Account.

"**Program Cash Reserve Required Amount (Junior Subordinated)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Senior)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Senior Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Subordinated)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Total)**" means, on any Payment Date, an amount equal to the sum of the Program Cash Reserve Required Amount (Senior), the Program Cash Reserve Required Amount (Subordinated) and the Program Cash Reserve Required Amount (Junior Subordinated).

"**Program Cash Reserve Required Deposit Amount (Junior Subordinated)**" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Total) exceeds the Program Cash Reserve Balance.

"**Program Cash Reserve Required Deposit Amount (Senior)**" means, on any Payment Date, the amount by which the Program Cash Reserve Required Amount (Senior) exceeds the Program Cash Reserve Balance.

"**Program Cash Reserve Required Deposit Amount (Subordinated)**" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Senior) plus the Program Cash Reserve Required Amount (Subordinated) exceeds the Program Cash Reserve Balance.

"**Province**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

"**Rating Agency**" means, with respect to any Outstanding Class, Series or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

"**Rating Agency Condition**" means, unless otherwise specified in the Related Supplemental Indenture for any Series or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any

Outstanding Notes immediately before the taking of such action, **[or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action]**, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

"**Record Date**" means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Indenture.

"**Refinancing Account**" has the meaning specified in subsection 7.02(b).

"**Refinancing Notice**" means a notice substantially in the form of Exhibit 2.

"**Registered Note**" means a Note issued in registered form.

"**Registered Noteholder**" means a Noteholder of a Registered Note.

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"**Related**" is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

(a) "Credit Enhancement Agreement": a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;

(b) "Funding Obligation Agreements": the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;

(c) "Liquidity Agreement": a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a Series or Tranche of such Issuer Funding Obligations constituting Notes;

(d) "Loan Agreement": a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and

(e) "Supplemental Indenture": a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Senior) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Subordinated) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

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

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

"**Securities Exchange Act**" means the United States Securities Exchange Act of 1934, as amended from time to time.

"**Security Interest**" means the Lien granted pursuant to Section 2.01.

"**Senior Borrowings**" means Borrowings that have been designated as "Senior Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Senior Funding Obligations**" means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

"**Senior Principal Shortfall**" has the meaning specified in subsection 7.07(b).

"**Senior Notes**" means Notes of a Series that have been designated as "Senior Notes" in the Related Supplemental Indenture.

"**Series**" means, with respect to any Class of Issuer Funding Obligation, the Series of the Class specified in the Related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Account.

"**Series Finance Reserve Account**" has the meaning specified in subsection 7.02(g).

"**Series Capital Account**" has the meaning specified in subsection 7.02(f).

"**Servicer**" has the meaning specified in the Master Transfer and Servicing Agreement.

"**Servicer Default**" has the meaning ascribed thereto in Section **[7.1]** of the Master Transfer and Servicing Agreement.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

"**Stated Principal Amount**," has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

"**Sub-Account**" means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

"**Subordinated/Senior Principal Shortfall**" has the meaning specified in subsection 7.07(a).

"**Subordinated Borrowings**" means Borrowings that have been designated as "Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

"**Subordinated Notes**" means Notes of a Series that have been designated as "Subordinated Notes" in the Related Supplemental Indenture.

"**Supplemental Indenture**" means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any Tranches of Notes belonging

to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

"**Tax**" has the meaning ascribed to the term "tax" in the regulations promulgated under the Act as of the date of this Indenture.

"**Temporary Global Note**" has the meaning specified in Section 3.05(a).

"**Termination Payment**" means all amounts payable upon early termination of any Derivative Agreement calculated in accordance with the terms of such Derivative Agreeement.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the Related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Underwriting Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

"**United States Person**" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**U.S. Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

"**U.S. Securities Act**" means the United States Securities Act of 1933, as amended from time to time.

"**Warehouse Facility Agreement**" means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

**EXHIBIT 1**
**FORM OF PAYMENT INSTRUCTIONS**

See Attached.

**EXHIBIT 2**
**FORM OF REFINANCING NOTICE**

See Attached.

[NTD: Notice must specify Series and the amount of the Principal Accumulation Amounts specified in the related Supplemental Indenture that will be repaid with the proceeds of the Refinancing.]

**~~[ISSUER]~~FAIR HYDRO TRUST**

**as Issuer**

**AND**

**~~[INDENTURE TRUSTEE]~~**

**BNY TRUST COMPANY OF CANADA**

**as Indenture Trustee**

# TRUST INDENTURE

**DATED AS OF [■], 2017**

## TABLE OF CONTENTS

Page


**RECITALS OF THE ISSUER** ..... **1**

**AGREEMENT OF THE PARTIES** ..... **1**

**ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION** ..... **1**

1.01 Definitions ..... 1
1.02 Compliance Certificates and Opinions ..... 2
1.03 Form of Documents Delivered to Indenture Trustee ..... 3
1.04 Actions by Noteholders ..... 3
1.05 Actions of Other Specified Creditors ..... 6
1.06 Effect of Headings and Table of Contents ..... 6
1.07 Successors and Assigns ..... 6
1.08 Severability ..... 6
1.09 Governing Law ..... 6
1.10 Counterparts ..... ~~7~~6
1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement ..... 7
1.12 Non-Business Days ..... 7
1.13 Interest Act ..... 7
1.14 Currency ..... 7
1.15 References to Acts of the Issuer ..... 7
1.16 Judgment Currency ..... 8

**ARTICLE II COLLATERAL** ..... **8**

2.01 Security for Obligations Secured ..... 8
2.02 Recording, Etc. ..... 10
2.03 Use of Collateral ..... 11
2.04 Suits To Protect the Collateral ..... ~~12~~11
2.05 Purchaser Protected ..... 12
2.06 Powers Exercisable by Receiver or Indenture Trustee ..... 12
2.07 Determinations Relating to Collateral ..... 12
2.08 Satisfaction and Discharge of Indenture ..... ~~13~~12
2.09 Release of all Collateral ..... ~~14~~13
2.10 Certain Commercial Law Representations and Warranties ..... 14

**ARTICLE III NOTE FORMS** ..... **15**

3.01 Forms Generally ..... 15
3.02 Forms of Notes ..... 15
3.03 Form of Indenture Trustee's Certificate of Authentication ..... ~~16~~15
3.04 Notes Issuable in the Form of a Global Note ..... 16
3.05 Temporary Global Notes and Permanent Global Notes ..... 18

**TABLE OF CONTENTS**
**(continued)**


Page

3.06 Beneficial Ownership of Global Notes ..... 20
3.07 Notices to Depository ..... 20
3.08 CUSIP Numbers ..... 20

**ARTICLE IV THE NOTES ..... 21**

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series~~,~~ ~~Class~~ or Tranche of Notes ..... 21
4.02 Denominations ..... ~~24~~**23**
4.03 Execution, Authentication and Delivery and Dating ..... ~~24~~**23**
4.04 Temporary Notes ..... ~~25~~**24**
4.05 Registration, Transfer and Exchange ..... ~~25~~**24**
4.06 Mutilated, Destroyed, Lost and Stolen Notes ..... ~~29~~**28**
4.07 Persons Entitled to Payment ..... ~~30~~**29**
4.08 Cancellation ..... ~~31~~**30**
4.09 Protection of Notes ..... ~~31~~**30**
4.10 New Issuances of Notes ..... **30**
**4.11 Redemption** ..... 31

**ARTICLE V CONDITIONS PRECEDENT ..... ~~32~~31**

5.01 Conditions Precedent for Incurrence of Indebtedness ..... ~~32~~**31**
5.02 No Consent ..... 33
5.03 Conditions Precedent for the Incurrence of other Obligations Secured ..... ~~34~~**33**
5.04 Acknowledgements ..... ~~34~~**33**

**ARTICLE VI SUBORDINATION ..... 34**

6.01 Subordination ..... 34
6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations ..... ~~35~~**34**
6.03 Rights of Specified Creditors Preserved ..... ~~35~~**34**
6.04 Renewal or Extension of Senior Funding Obligations ..... ~~36~~**35**

**ARTICLE VII ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS ..... ~~36~~35**

7.01 Available Collections ..... ~~36~~**35**
7.02 Issuer Accounts ..... 36
7.03 Investment of Funds in the Issuer Accounts ..... 39
7.04 Allocation of Amounts on Deposit in the Collection Account ..... 40
7.05 Allocation of Amounts on Deposit in ~~the Other Issuer Accounts~~**Interest Accumulation Account** ..... 43
7.06 **Allocation of Amounts on Deposit in Principal Accumulation Account** ..... **44**
**7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account** ..... **45**

**TABLE OF CONTENTS**
**(continued)**


Page

7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account 45
7.09 Refinancing 47
7.10 Allocation of Amounts on Deposit in the Series Accounts 48
7.11 Payments to be Held in Trust 4448
7.07 7.12 Application of Trust Money 4448

**ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES** 4448

8.01 Events of Default 4448
8.02 Acceleration of Maturity; Rescission and Annulment 4550
8.03 Waiver of Past Defaults 4751
8.04 Notice of Defaults 4751
8.05 Remedies Generally 4852
8.06 Default Interest and Expenses 4852
8.07 Indenture Trustee May File Proofs of Claim 4953
8.08 Indenture Trustee May Enforce Claims Without Possession of Notes 4954
8.09 Indenture Trustee May Elect to Hold the Collateral 5054
8.10 Termination by Indenture Trustee of Manager and Servicer 5054
8.11 Control by Debtholders 5054
8.12 Limitation on Suits 5055
8.13 Application of Money Following an Event of Default 5155
8.14 Limited Recourse 5357
8.15 Restoration of Rights and Remedies 5357
8.16 Rights and Remedies Cumulative 5358
8.17 Delay or Omission Not Waiver 5458
8.18 Waiver of Stay or Extension Laws 5458
8.19 Indenture Trustee Appointed Attorney 5458
8.20 Disclaimer of Marshalling 5559

**ARTICLE IX THE INDENTURE TRUSTEE** 5559

9.01 Certain Duties and Responsibilities 5559
9.02 Certain Rights of Indenture Trustee 5660
9.03 Not Responsible for Recitals or Issuer Funding Obligations 5862
9.04 May Hold Notes 5862
9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity 5862
9.06 Corporate Indenture Trustee Required; Eligibility 5963
9.07 Resignation and Removal; Appointment of Successor 5963
9.08 Acceptance of Appointment by Successor 6165
9.09 Merger, Conversion, Consolidation or Succession to Business 6166
9.10 Trust Indenture Legislation 6266
9.11 Representations and Covenants of the Indenture Trustee 6266
9.12 Indenture Trustee's Application for Instructions from the Issuer 6267

**TABLE OF CONTENTS**
**(continued)**

Page


9.13 Appointment of Co-Trustee or Separate Indenture Trustee ~~63~~67
9.14 Preservation of Information; Communications to Debtholders ~~64~~68
9.15 Acceptance of Trusts by Indenture Trustee ~~65~~70
9.16 Paying Agent ~~65~~70

**ARTICLE X MEETINGS** ~~67~~71

10.01 Conduct of Meetings ~~67~~71
10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution ~~69~~73
10.03 Extraordinary Resolution ~~71~~75
10.04 Declaration by Chairman of Result of Vote ~~72~~76
10.05 Minutes ~~72~~76
10.06 Signed Instruments ~~72~~76
10.07 Persons Who May Attend ~~72~~76
10.08 Binding Effect of Resolutions ~~72~~77
10.09 Notes Regarded as Not Outstanding for Certain Purposes ~~73~~77

**ARTICLE XI SUPPLEMENTAL INDENTURES** ~~73~~77

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors ~~73~~77
11.02 Supplemental Indentures and Amendments with Consent of Debtholders ~~75~~79
11.03 Execution of Amendments and Supplemental Indentures ~~76~~80
11.04 Effect of Amendments and Supplemental Indentures ~~76~~80
11.05 Reference in Notes to Supplemental Indentures ~~77~~81

**ARTICLE XII REPRESENTATIONS AND WARRANTIES OF THE ISSUER** ~~77~~81

12.01 Representations and Warranties of the Issuer ~~77~~81

**ARTICLE XIII COVENANTS OF THE ISSUER** ~~79~~83

13.01 Payment of Principal and Interest ~~79~~83
13.02 Use of Proceeds ~~79~~83
13.03 Maintenance of Office or Agency ~~79~~83
13.04 Legal Existence ~~80~~84
13.05 Separateness Covenants ~~80~~84
13.06 Compliance with Laws ~~81~~85
13.07 Performance of Obligations ~~81~~85
13.08 Funding Obligations ~~81~~85
13.09 Financial Statements ~~82~~85
13.10 Statement as to Compliance ~~82~~86
13.11 Payment Instruction ~~82~~86
13.12 Notice of Events of Default ~~82~~86

**TABLE OF CONTENTS**
**(continued)**

Page


13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors ~~83~~86
13.14 Other Positive Covenants ~~83~~87
13.15 Rule 144A Information ~~84~~88
13.16 Further Instruments and Acts ~~84~~88
13.17 No Other Business ~~84~~88
13.18 Amendments to Program Agreements ~~84~~88
13.19 Issuer May Consolidate, Etc., Only on Certain Terms ~~85~~89
13.20 Successor Substituted ~~86~~90
13.21 Guarantees, Loans, Advances and Other Liabilities ~~86~~90
13.22 Capital Expenditures ~~86~~90
13.23 Restricted Payments ~~86~~90
13.24 No Borrowing ~~87~~91
13.25 Other Negative Covenants ~~87~~91
13.26 Indenture Trustee May Perform Covenants ~~87~~91

**ARTICLE XIV MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS** ~~88~~92

14.01 Management Agreement ~~88~~92
14.02 Credit Enhancement Agreements ~~88~~92

**ARTICLE XV NOTICES** ~~89~~92

15.01 Notice to Issuer ~~89~~92
15.02 Notice to the Indenture Trustee ~~89~~93
15.03 Notice to Noteholders ~~90~~93
15.04 Notice to Other Specified Creditors ~~91~~94
15.05 Notice to Rating Agencies ~~91~~95
15.06 Change of Address ~~91~~95

**ARTICLE XVI MISCELLANEOUS** ~~91~~95

16.01 No Petition ~~91~~95
16.02 Withholding Rights 95
16.03 U.S. Tax Treatment ~~92~~95
~~16.03~~16.04 Alternate Payment Provisions ~~92~~96
~~16.04~~16.05 Final Distribution ~~92~~96
~~16.05~~16.06 Force Majeure ~~93~~97
~~16.06~~16.07 Delivery of Executed Copies ~~93~~97

**SCHEDULE A — DEFINED TERMS**
**EXHIBIT 1 — FORM OF PAYMENT INSTRUCTIONS**
**EXHIBIT 2 — FORM OF REFINANCING NOTICE**

**TABLE OF CONTENTS**
**(continued)**

Page

This **TRUST INDENTURE**, between ~~[ISSUER]~~**COMPUTERSHARE TRUST COMPANY OF CANADA in its capacity as trustee of FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), and ~~[INDENTURE TRUSTEE]~~**BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee[1] (the "**Indenture Trustee**"), is made and entered into as of [■], 2017.

## RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of **Issuer** Funding Obligations in one or more **Classes,** Series~~, Classes~~ or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;

~~(b) [all other terms used herein which are defined in the Master Transfer and Servicing Agreement, either directly or by reference therein, have the meanings assigned to them therein;]~~[1]

**(b)** ~~(c)~~ all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

[1] **This draft does not reflect any comments from the Indenture Trustee.**

~~[1] **NTD**: Defined terms from Master Transfer and Servicing Agreement to be included in Schedule A. Schedule A will be a master glossary for all Program Agreements.~~

**(c)** ~~(d)~~ unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;

**(d) references to an agreement shall mean such agreement, as amended, modified, restated and supplemented from time to time in accordance with the provisions hereof;**

(e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

## 1.02 Compliance Certificates and Opinions

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series~~, Class~~ or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant

to Article V and this Section 1.02, as applicable, in connection with the ~~first~~ authentication of Notes of such Series~~, Class~~ or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

**1.03 Form of Documents Delivered to Indenture Trustee**

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**1.04 Actions by Noteholders**

(a) Any request, demand, authorization, direction, notice, consent, **resolution,** waiver or other action (collectively, an "**Action**") provided by this Indenture to be given or taken by Noteholders of any **Class,** Series~~, Class~~ or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. ~~If Notes~~

~~of a Series, Class or Tranche are issuable in whole or in part as Bearer Notes~~**In addition**, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Noteholders duly called and held in accordance with the provisions of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

(b) ~~The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any notary public or other officer authorized by applicable law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or limited liability company, or a partner of a partnership, on behalf of such corporation, limited liability company or partnership, such certificate or affidavit will also constitute sufficient proof of his or her authority.~~ The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may ~~also~~ be proved in any ~~other~~ manner which the Indenture Trustee deems sufficient.

(c) (i) The ownership of Registered Notes will be proved by the Note Register.

(ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.

(d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

(e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.

(f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.

(g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.

(h) Without limiting the generality of the foregoing, unless otherwise specified ~~pursuant to Section 4.01 or~~ pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than ~~90~~**six months** days after such record date.

**1.05 Actions of Other Specified Creditors**

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

**1.06 Effect of Headings and Table of Contents**

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

**1.08 Severability**

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**1.09 Governing Law**

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY

MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

**1.10 Counterparts**

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

**1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement**

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

**1.12 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.13 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

**1.14 Currency**

Unless stated otherwise, all amounts herein are stated in Dollars.

**1.15 References to Acts of the Issuer**

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the

Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

**1.16 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.

(b) The term "**rate of exchange**" in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## COLLATERAL

**2.01 Security for Obligations Secured**

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

(a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified

Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:

(i) the Issuer Investment Interest;

(ii) ~~the Collection Account, the Refinancing Account, each Finance Reserve Account, each Capital Reserve Account and each Supplemental Reserve~~**each Issuer** Account (including all Sub-Accounts of each ~~of the foregoing~~**Issuer Account**);

(iii) all Eligible Investments and all investment property, money and other property held in the ~~Collection Account, the Refinancing Account, any Finance Reserve Account, any Capital Reserve Account or any Supplemental Reserve Account~~**Issuer Accounts** (including any Sub-Accounts of each ~~of the foregoing~~**Issuer Account**);

(iv) all rights, benefits and powers of the Issuer under any Program Agreement;

(v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;

(vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;

(vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;

(viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;

(ix) all amounts received with respect to all of the foregoing; and

(x) all proceeds of the foregoing; and

(b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest

in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the "**Collateral**".

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

**2.02 Recording, Etc.**

(a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.

(b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.

(c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:

(i) grant the Security Interest more effectively in all or any portion of the Collateral;

(ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;

(iv) enforce its rights under the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement

Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

(vi) pay all Taxes levied or assessed upon the Collateral when due.

(d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.

(e) Without limiting the generality of subsection 2.02(c) or (d):

(i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.

(ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

**2.03 Use of Collateral**

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the

right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

**2.04 Suits To Protect the Collateral**

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

**2.05 Purchaser Protected**

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

**2.06 Powers Exercisable by Receiver or Indenture Trustee**

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

**2.07 Determinations Relating to Collateral**

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05).

The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

**2.08 Satisfaction and Discharge of Indenture**

(a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any **Class,** Series~~, Class~~ or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every **Class,** Series~~, Class~~ or Tranche of ~~Notes~~**Funding Obligations** as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.

(b) This Indenture will cease to be of further effect with respect to any **Class,** Series~~, Class~~ or Tranche of ~~Notes~~**Funding Obligations** (except as to any surviving rights of transfer or exchange of Notes of that **Class,** Series~~, Class~~ or Tranche expressly provided for herein or in ~~the~~**any** form of Note for that **Class,** Series~~, Class~~ or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that **Class,** Series~~, Class~~ or Tranche, when:

(i) all Notes of that **Class,** Series~~, Class~~ or Tranche theretofore ~~authenticated and delivered~~**outstanding** (other than (A) Notes of that **Class,** Series~~, Class~~ or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section ~~16.04~~**16.05**(b), and (B) ~~Notes~~**Funding Obligations** of that **Class,** Series~~, Class~~ or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section ~~16.04~~**16.05**(b)) have been delivered to the Indenture Trustee ~~canceled or~~ for cancellation **or been cancelled**;

(ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the ~~Notes~~**Funding Obligations** of that **Class,** Series~~, Class~~ or Tranche; and

(iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that **Class,** Series~~, Class~~ or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any **Class,** Series~~, Class~~ or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that **Class,** Series~~, Class~~ or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections ~~7.07~~**7.12** and ~~16.04~~**16.05**(b) will survive such satisfaction and discharge.

**2.09 Release of all Collateral**

(a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.

(b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.

(c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

**2.10 Certain Commercial Law Representations and Warranties**

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

(a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

(b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).

(c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.

(d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

## ARTICLE III
## NOTE FORMS

### 3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any **Class,** Series~~, Class~~ or Tranche, to the rules of any securities exchange on which such Notes are listed.

### 3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

### 3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the **Class,** Series~~, Class~~ or Tranche designated therein referred to in the within-mentioned Indenture.

~~[INDENTURE TRUSTEE]~~**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee,

By:

Authorized Signatory

Dated:

### 3.04 Notes Issuable in the Form of a Global Note

(a) If the Issuer establishes ~~pursuant to Sections 3.02 and 4.01~~ that the Notes of a particular **Class,** Series~~, Class~~ or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such **Class,** Series~~, Class~~ or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the

Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to ~~[~~Fair Hydro Trust~~]~~ (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("**CDS**"), to ~~[~~Fair Hydro Trust~~]~~ (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note", and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

(b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.

(c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:

(i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such **Class,** Series~~, Class~~ or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or **ceases to be** a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer

within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such **Class,** Series~~, Class~~ or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such **Class,** Series~~, Class~~ or Tranche of like tenor and terms in **definitive form in** an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.

(ii) The Issuer may at any time and in its sole discretion determine that the Notes of any **Class,** Series~~, Class~~ or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such **Class,** Series~~, Class~~ or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such **Class,** Series~~, Class~~ or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such **Class,** Series~~, Class~~ or Tranche or portion thereof in exchange for such Global Note or Notes.

(iii) If any Event of Default has occurred and is continuing~~ with respect to such Global Notes,~~ and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of ~~that~~**all** Series advise the Indenture Trustee and the Depository that ~~a~~ Global ~~Note is~~**Notes are** no longer in the best interest of the Noteholders~~ of that Series~~, the holders of Global Notes~~ of that Series~~ may exchange such Notes for individual Notes.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

**3.05 Temporary Global Notes and Permanent Global Notes**

(a) If specified in the Related Supplemental Indenture for any ~~Tranche~~**Series**, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the "**Temporary Global Note**"), without interest coupons, in the denomination of the entire aggregate principal amount of such Series~~, Class or Tranche~~ and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the "**Permanent Global Notes**").

(b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series~~, Class or Tranche~~, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series~~, Class or Tranche~~ of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global

Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

(c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.

(d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

**3.06 Beneficial Ownership of Global Notes**

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

(a) the Issuer and the Indenture Trustee may deal with the applicable ~~clearing agency or~~ Depository and the~~ clearing agency's or~~ Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and

(b) the rights of the respective Note Owners will be exercised only through the ~~applicable clearing agency or Depository and the clearing agency's or Depository's participants and will be limited to those established by applicable law and agreements between such Note Owners and the clearing agency or Depository and/or the clearing agency's or~~**Depository and the** Depository's participants. ~~Pursuant to the operating rules of the applicable clearing agency, unless~~**Unless** and until Notes in definitive form are issued pursuant to Section 3.04,~~ the clearing agency or~~ the Depository will make book-entry transfers among the ~~clearing agency's or the~~ Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such~~ clearing agency's or~~ Depository's participants**, in accordance with the Depository's applicable procedures from time to time**.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the

Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the ~~clearing agency~~**Depository** and the ~~clearing agency~~**Depository**'s participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes **in accordance with the applicable procedures of the Depository**.

**3.07 Notices to Depository**

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

**3.08 CUSIP Numbers**

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

## ARTICLE IV
## THE NOTES

**4.01 General Title, General Limitations, Issuable in Series, Terms of a Series~~, Class~~ or Tranche of Notes**

(a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.

(b) The Notes **of any Class** may be issued in one or more Series~~, Classes~~ or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.

(c) **The Classes of Notes are as set forth in this Indenture.** Each Note issued must be part of a ~~Series, Class~~ and ~~Tranche~~**Series** of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A ~~Class or~~ Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.

~~(d) Each Series of Notes may, but need not be, subdivided into multiple Classes. Notes belonging to a Class in any Series may be entitled to specified payment priorities over other Classes of Notes in that Series.~~

**(d)** ~~(e)~~ Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If **the Notes of** a Series ~~of Notes is subdivided into multiple Classes, the Notes of each Class of such Series shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Class~~ of Notes belong to different Tranches, all Notes of such ~~Class~~**Series**, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the ~~Class~~**Series** of Notes.

~~(f) Notes of a Series that belong to different Classes in that Series belong to different Tranches on the basis of the difference in Class membership.~~

**(e)** ~~(g)~~ Each ~~Class~~**Series** of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single ~~Class~~**Series** of a ~~Series~~**Class** will belong to different Tranches if they have different terms and conditions. With respect to any ~~Class~~**Series** of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.

**(f)** ~~(h)~~ Before the initial issuance of Notes of each Series~~, Class~~ or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

**(i)** **The Class in respect of such Series;**

**(ii)** ~~(i)~~ the Series designation;

**(iii)** ~~(ii)~~ the Stated Principal Amount of the Notes;

**(iv)** ~~(iii)~~ whether such Notes are of a particular ~~Class of Notes or a~~ Tranche of ~~a Class of~~ Notes;

**(v)** ~~(iv)~~ the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;

~~(v) if the principal of or interest, if any, on such Notes are to be payable, at the election of the Issuer or a Noteholder, in a currency or currencies other than that in which the Notes are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;~~

~~(vi) if the amount of payments of principal of or interest, if any, on such Notes may be determined with reference to an index based on (A) a currency or currencies other than that in which the Notes are stated to be payable, (B) changes in the prices of one or more other securities or indexes of securities or (C) changes in the prices of one or more commodities or indexes of commodities, or any combination of the foregoing, the manner in which such amounts will be determined;~~

**(vi)** ~~(vii)~~ the price or prices at which such Series~~, Class~~ or Tranche of Notes will be issued;

**(vii)** ~~(viii)~~ the times at which such Series~~, Class~~ or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;~~[2]~~

**(viii)** ~~(ix)~~ the rate per annum at which such Series~~, Class~~ or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;

**(ix)** ~~(x)~~ each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series~~, Class~~ or Tranche of Notes;

**(x) the Principal Accumulation Date for such Series of Notes;**

**(xi) the Principal Accumulation Amounts for such Series of Notes;**

**(xii)** ~~(xi)~~ the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific Dollar Principal Amount, as applicable, of such Series~~, Class~~ or Tranche of Notes;

**(xiii)** ~~(xii)~~ whether or not application will be made to list such Series~~, Class~~ or Tranche of Notes on any securities exchange;

**(xiv)** ~~(xiii)~~ any Events of Default with respect to such Series~~, Class~~ or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series~~, Class~~ or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series~~, Class~~ or Tranche);

**(xv)** ~~(xiv)~~ if such Series~~, Class~~ or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be

~~[2] To confirm whether optional or mandatory redemption is possible. If not, a specific provision prohibiting it will be included.~~

exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;

**(xvi)** ~~(xv)~~ if such Series~~, Class~~ or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series~~, Class~~ or Tranche of Notes are to be issued with or without coupons or both;

~~(xvi) the subordination of such Series, Class or Tranche of Notes to any other indebtedness of the Issuer, including without limitation, the Notes of any other Series, Class or Tranche;~~

(xvii) **[if such Series~~, Class~~ or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;]**

(xviii) if such Series~~, Class~~ or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;

(xix) the Record Date for any Payment Date of such Series~~, Class~~ or Tranche of Notes, if different from the last day of the month before the related Payment Date;

~~(xx) the details of any accumulation period for such Series, Class or Tranche of Notes and the amount scheduled to be deposited in a Capital Reserve Account, if any, on each Payment Date during such accumulation period;~~

**(xx)** ~~(xxi)~~ whether and under what conditions, additional amounts will be payable to Noteholders of such Series~~, Class~~ or Tranche; and

**(xxi)** ~~(xxii)~~ any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

**(g)** ~~(i)~~ The Notes of each **Class,** Series~~, Class~~ or Tranche will be distinguished from the Notes of each other **Class,** Series~~, Class~~ or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.

**(h)** ~~(j)~~ Any terms or provisions in respect of the Notes of any **Class,** Series~~, Class~~ or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

**4.02 Denominations**

The Notes of each Series~~, Class~~ or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series~~, Class~~ or Tranche, the Registered Notes of that Series~~, Class~~ or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series~~, Class~~ or Tranche, the Bearer Notes of that Series~~, Class~~ or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

**4.03 Execution, Authentication and Delivery and Dating**

(a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.

(b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.

(d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series~~, Class~~ or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

(e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.

(f) Unless otherwise provided in the form of Note for any Series~~, Class~~ or Tranche, all Notes will be dated the date of their authentication.

(g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive

evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

**4.04 Temporary Notes**

(a) Pending the preparation of definitive Notes of any Series~~, Class~~ or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.

(b) If temporary Notes of any Series~~, Class~~ or Tranche are issued, the Issuer will cause definitive Notes of such Series~~, Class~~ or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series~~, Class~~ or Tranche will be exchangeable for definitive Notes of such Series~~, Class~~ or Tranche upon surrender of the temporary Notes of such Series~~, Class~~ or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series~~, Class~~ or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series~~, Class~~ or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series~~, Class~~ or Tranche.

**4.05 Registration, Transfer and Exchange**

(a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of Registered Notes of a particular **Class,** Series~~, Class~~ or Tranche, and for transfers of Registered Notes or of Registered Notes of such **Class,** Series~~, Class~~ or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

(b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any **Class,** Series~~, Class~~ or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such **Class,** Series~~, Class~~ or Tranche of any authorized denominations, of a like aggregate Stated

Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.

(c) Subject to Section 3.04, at the option of the Noteholder, Notes of any **Class,** Series~~, Class~~ or Tranche may be exchanged for other Notes of such **Class,** Series~~, Class~~ or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same **Class,** Series~~, Class~~ and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.

(d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.

(f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

(g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any **Class,** Series~~, Class~~ or Tranche during a period beginning at the opening of business 15 days

before the day of selection of Notes of such **Class,** Series~~, Class~~ or Tranche to be redeemed and ending at the close of business on (A) if Notes of such **Class,** Series~~, Class~~ or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such **Class,** Series~~, Class~~ or Tranche so selected for redemption or (B) if Notes of the **Class,** Series~~, Class~~ or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the **Class,** Series~~, Class~~ or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.

(h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.

(i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.

(j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any **Class,** Series~~, Class~~ or Tranche of Notes issued under this Indenture.

(k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR

PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code ("**Similar Law**"); or (ii) (A) the Note is rated at least "BBB-" or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction

under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

**4.06 Mutilated, Destroyed, Lost and Stolen Notes**

(a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, **Class,** Series~~, Class~~ or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same **Class,** Series~~, Class~~ or Tranche duly issued hereunder.

(e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**4.07 Persons Entitled to Payment**

(a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).

(b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.

(c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.

(d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.

(e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.

(f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

(g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so) to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

**4.08 Cancellation**

All Notes surrendered for payment, redemption, **repurchase,** transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the

Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

**4.09 Protection of Notes**

(a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.

(b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

**4.10 New Issuances of Notes**

(a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding ~~Class~~**Series** or Tranche of a ~~Series~~**Class** of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding ~~Class~~**Series** or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that ~~Class~~**Series** or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a ~~Class~~**Series** or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a ~~Class~~**Series** or Tranche of Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit~~ of the additional Notes. Furthermore, the targeted deposits, if any, to any applicable Issuer Account, will be increased proportionately to reflect the principal amount~~ of the additional Notes.

(b) When issued, the additional Notes of a ~~Class~~**Series** or Tranche will be identical in all respects to the other Outstanding Notes of that ~~Class~~**Series** or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related

Supplemental Indenture as the other Outstanding Notes of that ~~Class~~**Series** or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

## 4.11 Redemption

**[NTD: redemption mechanics to be included.]**

# ARTICLE V
# CONDITIONS PRECEDENT

## 5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:

(i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;

(iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;

(v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;

(d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;

(e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable ~~Class~~**Series** or Tranche of Notes;

(f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section ~~7.06~~**7.11** (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;

**(g) the Change of Law Protection Agreement shall be in full force and effect against the Province or has been replaced with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations pursuant to an Ordinary Resolution;**

**(h)** ~~(g)~~ the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;

**(i)** ~~(h)~~ in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;

**(j)** ~~(i)~~ in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code), then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and

**(k)** ~~(j)~~ in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

**5.02 No Consent**

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

**5.03 Conditions Precedent for the Incurrence of other Obligations Secured**

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and

(b) each counterparty to such agreement (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section ~~7.06~~7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

**5.04 Acknowledgements**

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

## ARTICLE VI
## SUBORDINATION

**6.01 Subordination**

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior

Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

**6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations**

(a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.

(b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

**6.03 Rights of Specified Creditors Preserved**

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI

prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

### 6.04 Renewal or Extension of Senior Funding Obligations

(a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.

(b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

## ARTICLE VII
## ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

### 7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

### 7.02 Issuer Accounts

(a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Collection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of

the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the "Collection Account~~"~~**"**

**(b)** **On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Interest Accumulation Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Interest Accumulation** Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 **days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Interest Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Interest Accumulation Account to such new Interest Accumulation Account. From the date each such new Interest Accumulation Account is established, it shall be the "Interest Accumulation Account." The Interest Accumulation Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.**

**(c)** **On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Principal Accumulation Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Principal Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30** days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new **Principal Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Principal Accumulation Account to such new Principal Accumulation Account. From the date each such new Principal Accumulation Account is**

established, it shall be the "Principal Accumulation Account." The Principal Accumulation Account is a "capital account" under, and as defined under, the Fair Hydro Regulations.

(d) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Program Cash Reserve Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Program Cash Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Program Cash Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Program Cash Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Program Cash Reserve Account to such new Program Cash Reserve Account. From the date each such new Program Cash Reserve Account is established, it shall be the "Program Cash Reserve Account." The Program Cash Reserve Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(e) ~~(b)~~ On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Refinancing Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the "Refinancing Account."

(f) ~~(c)~~ From time to time in connection with the creation of any Series ~~or Class~~ of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "Series **Capital Reserve Account**") in the name

of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A **Series** Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account ~~not otherwise required to be paid to Specified Creditors at such time~~ shall be credited to a **Series** Capital Reserve Account, to the extent that there is a requirement for funds in such **Series** Capital Reserve Account, in accordance with the terms of ~~any~~**the** applicable Funding Obligation Agreement and Section 7.04. Each **Series** Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a **Series** Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new **Series** Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new **Series** Capital Reserve Account. From the date each such new **Series** Capital Reserve Account is established, it shall be a "**Series** Capital Reserve Account~~"~~**." Each Series Capital Reserve Account shall be a "capital account" under, and as defined under, the Fair Hydro Act Regulations.**

**(g)** ~~(d)~~ From time to time in connection with the creation of any Series ~~or Class~~ of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Series** **Finance Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A **Series** Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for ~~one or more~~**a** Series ~~or Classes~~ of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account ~~not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time~~ shall be credited to a **Series** Finance Reserve Account, to the extent that there is a requirement for funds in such **Series** Finance Reserve Account, in accordance with the terms of ~~any~~**the** applicable Funding Obligation Agreement and Section 7.04. Each **Series** Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a **Series** Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency

Condition is satisfied) establish a new **Series** Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new **Series** Finance Reserve Account. From the date each such new **Series** Finance Reserve Account is established, it shall be a "**Series** Finance Reserve Account~~".~~**." Each Series Finance Reserve Account shall be a "finance reserve account" under, and as defined under, the Fair Hydro Act Regulations.**

~~(e) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause the Indenture Trustee to establish one or more Eligible Deposit Accounts denominated as "**Supplemental Reserve Accounts**" in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Supplemental Reserve Account may be established for such other purposes not prohibited by this Indenture as the Issuer may deem necessary or desirable from time to time. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Supplemental Reserve Account, to the extent that there is a requirement for funds in such Supplemental Reserve Account, in accordance with the terms of the any applicable Funding Obligation Agreement and Section 7.04. Each Supplemental Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Supplemental Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Supplemental Reserve Account, as applicable, that is an Eligible Deposit Account and shall transfer any funds or other property from such Supplemental Reserve Account to such new Supplemental Reserve Account. From the date each such new Supplemental Reserve Account is established, it shall be a "Supplemental Reserve Account".~~

## 7.03 Investment of Funds in the Issuer Accounts

(a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments

pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.

(b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.

(c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.

(d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections ~~7.04 and~~ 7.05 **to 7.10**.

(e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.

(f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided, however, that such funds shall remain uninvested upon the occurrence of any of the following events:

(i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or

(ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

**7.04 Allocation of Amounts on Deposit in the Collection Account**

(a) All Senior Funding Obligations of each Series~~, Class~~ or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series~~, Class~~ **or Tranche, or (iv) the Principal Accumulation Date of such Series** or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series~~, Class~~ or Tranche will in all respects be equally and ratably entitled to the benefits hereof

with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series~~, Class~~ **or Tranche, or (iv) the Principal Accumulation Date of such Series** or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series~~, Class~~ or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date~~ of the Junior Subordinated Funding Obligations~~**, or (iv) the Principal Accumulation Date** of such Series~~, Class~~ or Tranche, except as specified in the Related Funding Obligation Agreement.

(b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).

(c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

(d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.

(e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:

(i) First, ~~(A)~~ to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; ~~and then (B)~~

**(ii)** **Second,** to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in

respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[32] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

**(iii)** ~~(ii) Second, *pari passu*, (A) to Debtholders~~**Third**, on a *pro rata* basis~~, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations~~ **(A) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date**, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

**(iv)** ~~(iii) Third, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account in accordance with the terms of any Related Funding Obligation Agreement~~**Fourth, on a *pro rata* basis (A) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date**, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

~~(iv) Fourth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any other Issuer Account as required by any Related Funding Obligation Agreement, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;~~

(v) Fifth, to ~~the Manager in respect of~~**Debtholders, on a *pro rata* basis,** all fees~~, expenses, reimbursement and indemnity amounts owing;~~ **and other amounts (other than interest or principal) due and payable on the Senior Funding Obligations,**

(vi) Sixth, to ~~the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (i);~~**deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Senior);**

(vii) Seventh, ~~(A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any~~

[32] To be confirmed.

~~relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;~~**to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement, other than any Series Capital Account or Series Finance Reserve Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;**

(viii) Eighth, to ~~Debtholders, on a *pro rata* basis,~~**the Manager** in respect of all ~~interest accrued and unpaid, if any, and~~ fees**, expenses, reimbursement** and ~~other amounts (other than principal) due and payable on the Subordinated Funding Obligations~~**indemnity amounts owing**;

(ix) Ninth, to ~~Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;~~**transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;**

(x) Tenth, to transfer ~~such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;~~**to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date,**

(xi) Eleventh, to Debtholders, on a *pro rata* basis, ~~in respect of all interest accrued and unpaid, if any, and~~**all** fees and other amounts (other than **interest or** principal) due and payable on the ~~Junior~~ Subordinated Funding Obligations;

(xii) Twelfth, to ~~Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Junior Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;~~**deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Subordinated);**

(xiii) Thirteenth**, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve**

**Account as required by any Related Funding Obligation Agreement related solely to Subordinated Funding Obligations;**

**(xiv)** **Fourteenth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date,**

**(xv)** **Fifteenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date,**

**(xvi)** **Sixteenth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Junior Subordinated Funding Obligations;**

**(xvii)** **Seventeenth**, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any ~~Issuer Account (other than a Capital Reserve Account)~~**Series Capital Accounts or Series Finance Reserve Accounts** as required by any Related Funding Obligation Agreement related solely to Junior Subordinated Funding Obligations ~~as required by any Related Funding Obligation Agreement~~;

**(xviii)** ~~(xiv) Fourteenth~~**Eighteenth**, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

**(xix)** ~~(xv) Fifteenth~~**Nineteenth**, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than $100 in any Monthly Period; ~~and~~

**(xx)** **Twentieth, on a *pro rata* basis (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity; and**

**(xxi)** ~~(xvi) Sixteenth~~**Twenty-First**, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the

Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

**7.05 Allocation of Amounts on Deposit in ~~the Other Issuer Accounts~~Interest Accumulation Account**

~~(a)~~ Subject to ~~clause (b) below, if, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date~~: ~~(i) amounts on deposit in any Issuer Account, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations, may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (iii); (ii) amounts on deposit in any Issuer Account related solely to Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (ix); and (iii) amounts on deposit in any Issuer Account related solely to Junior Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (xii).~~ **Sections 7.07 and 8.13, on each Interest Payment Date, any amount on deposit in the Interest Accumulation Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Interest Payment Date:**

**(a)** **Firstly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on the Senior Funding Obligations on such Interest Payment Date;**

**(b)** **Secondly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Subordinated Funding Obligations shall be made under this Section 7.05(b) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Interest Payment Date, and (y) the amount on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of the Interest Payment Date;**

**(c)** **Thirdly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Junior Subordinated Funding Obligations shall be made under this Section 7.05(c) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and the Subordinated Funding Obligations as of such Interest Payment Date; and (y) the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required**

Principal Accumulation Amount (Subordinated) as of such Interest Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the succeeding Interest Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full including all interest thereon any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Interest Accumulation Account shall be applied in accordance with Section 8.13.

7.06 Allocation of Amounts on Deposit in Principal Accumulation Account

Subject to Section 8.13, on each Principal Payment Date, any amount on deposit in the Principal Accumulation Account and any amounts transferred pursuant to Section 7.07 will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Principal Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Junior Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Junior Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the

succeeding Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Principal Accumulation Account shall be applied in accordance with Section 8.13.

7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account

(a) If on any Principal Payment Date, the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations and Subordinated Funding Obligations payable on such Principal Payment Date (the deficiency being a "Subordinated/Senior Principal Shortfall"), an amount equal to the lesser of:

(i) the Subordinated/Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and Subordinate Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

(b) If on any Principal Payment Date after making any transfer contemplated by subsection 7.07(a), the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date (the deficiency being a "Senior Principal Shortfall"), an amount equal to the lesser of:

(i) the Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account

(a) On each Interest Payment Date, amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Interest Accumulation Account is less than the amount of interest due and payable on the Senior Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Senior Funding Obligations on such Interest Payment Date,

(ii) Secondly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(b) is less than the amount of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(c) is less than the amount of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(b) On each Principal Payment Date (and if the Principal Payment Date is also an Interest Payment Date, after making the applications provided for in subsection 7.08(a) and Section 7.07), amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Principal Accumulation Account is less than the amount of principal due and payable on the Senior Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Senior Funding Obligations on such Principal Payment Date;

(ii) Secondly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(b) is less than the amount of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Subordinated Funding Obligations on such Principal

Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(c) is less than the amount of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(c) Any amounts remaining after making the applications referred to in subsection 7.08(a) and subsection 7.08(b): (i) to be held in the Program Cash Reserve Account for distribution under this Section 7.08 on the succeeding Interest Payment Date or Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Program Cash Reserve Account shall be applied in accordance with Section 8.13.

## 7.09 Refinancing

(a) Not less than [30] days prior the first day of the Reference Period that includes the Principal Accumulation Date in respect of a Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, the Issuer shall, if it intends to repay all or a portion of the principal obligations of such Funding Obligation Agreement pursuant to a Refinancing, issue a Refinancing Notice to the Indenture Trustee.

(b) ~~Notwithstanding anything to the contrary contained herein but subject to Section 8.13:~~On completion of a Refinancing all proceeds received by the Issuer shall be deposited to the Refinancing Account.

(c) On each Payment Date, an amount shall be transferred from the Refinancing Account to the Principal Accumulation Account equal to the lesser of:

(i) ~~amounts~~**The amount** on deposit in the Refinancing Account ~~may only be withdrawn from the Refinancing Account for the purpose of repaying the principal amount of Issuer Funding Obligations which are due and payable and interest thereon~~; and

**(ii) The Deferred Principal Accumulation Amount.**

**(d) After the final Issuer Funding Obligation has been repaid in full, any amounts remaining in** the Refinancing Account **shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts remaining in the Refinancing Account shall be applied in accordance with Section 8.13.**

## 7.10 Allocation of Amounts on Deposit in the Series Accounts

~~(ii)~~ **If**, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date amounts on deposit in ~~an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations may only~~**any Series Account may** be withdrawn from such ~~Issuer~~**Series** Account ~~for the purpose for which such Issuer Account was established~~ and allocated ~~only~~ to ~~those~~ Specified Creditors ~~for whom such Issuer Account was established~~**in accordance with the terms of the Related Funding Obligations Agreement**.

## 7.11 ~~7.06~~ Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

## 7.12 ~~7.07~~ Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

## ARTICLE VIII
## EVENTS OF DEFAULT AND REMEDIES[4]

### 8.01 Events of Default

**[NTD: to be determined if certain events of default should be triggered on a series by series basis.]**

"**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of ~~65~~**[5]** days following the date on which such interest became due and payable;

(b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;

(c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of ~~90~~**60** days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the ~~90~~**60**-day period;

(d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of ~~90~~**60** days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of

[4] ~~Subject to ongoing discussions.~~

Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the ~~90~~**60**-day period;

(e) an Insolvency Event in respect of the Issuer;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within ~~90~~**10** days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;

(g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or

(h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

**8.02 Acceleration of Maturity; Rescission and Annulment**

**[NTD: to be determined if acceleration should be determined on a series by series basis.]**

(a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

(b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will

automatically and immediately be obligated to pay off the Issuer Funding Obligations.

(c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and

(ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.

(d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

(e) No such rescission will affect any subsequent default or impair any right consequent thereon.

**8.03 Waiver of Past Defaults**

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be

deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

**8.04 Notice of Defaults**

(a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:

(i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;

(ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;

(iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and

(iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

(b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

**8.05 Remedies Generally**

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part

thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

**8.06 Default Interest and Expenses**

The Issuer covenants that if:

(a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or

(b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

**8.07 Indenture Trustee May File Proofs of Claim**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and

(b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

### 8.08 Indenture Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or the Notes of any **Class,** Series~~, Class~~ or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such **Class,** Series~~, Class~~ or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

### 8.09 Indenture Trustee May Elect to Hold the Collateral

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

### 8.10 Termination by Indenture Trustee of Manager and Servicer

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

## 8.11 Control by Debtholders

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

(a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and

(b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

## 8.12 Limitation on Suits

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

(a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;

(c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

## 8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or

other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

(a) First, to ~~(A)~~ the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; ~~and then~~

**(b)** **Second,** to ~~(B)~~ the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[~~53~~] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

**(c)** ~~(b) [Second~~**Third**, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;

**(d)** ~~(c) Third~~**Fourth**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;]~~64~~

**(e)** ~~(d) Fourth~~**Fifth**, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

**(f)** ~~(e) Fifth~~**Sixth**, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

~~(f) Sixth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;~~

(g) Seventh, to the ~~payment or remittance of all Taxes exigible and not previously paid pursuant to clause (a)~~**Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing**;

[~~53~~] To be confirmed.

~~64~~ Subject to ongoing discussion.

(h) Eighth~~, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;(i)~~ ~~Ninth~~, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

**(i)** ~~(j) Tenth~~**Ninth**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;

**(j)** ~~(k) Eleventh~~**Tenth**, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

**(k)** ~~(l) Twelfth~~**Eleventh**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;

**(l)** ~~(m) Thirteenth~~**Twelfth**, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party; ~~and~~

**(m)** **Thirteenth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;**

(n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in ~~an Issuer~~**a Series** Account established solely for the benefit of one or more Series~~, Classes or Tranches~~ of Issuer Funding Obligations ~~(which, for greater certainty, shall not include the Refinancing Account)~~ shall first be used to satisfy all obligations owing to those Specified Creditors for whom such ~~Issuer~~**Series** Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

**8.14 Limited Recourse**

(a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.

(b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).

(c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

**8.15 Restoration of Rights and Remedies**

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

**8.16 Rights and Remedies Cumulative**

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**8.17 Delay or Omission Not Waiver**

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

**8.18 Waiver of Stay or Extension Laws**

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**8.19 Indenture Trustee Appointed Attorney**

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

(a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;

(b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and

(c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

**8.20 Disclaimer of Marshalling**

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the

Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

## ARTICLE IX
## THE INDENTURE TRUSTEE

### 9.01 Certain Duties and Responsibilities

(a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);

(ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

(iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

**9.02 Certain Rights of Indenture Trustee**

Except as otherwise provided in Section 9.01:

(a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;

(h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;

(j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;

(l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

(m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

**9.03 Not Responsible for Recitals or Issuer Funding Obligations**

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

**9.04 May Hold Notes**

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

**9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity**

(a) The Issuer agrees:

(i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as ~~[Indenture Trustee]~~**BNY Trust Company of Canada** is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and

(iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

(b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

**9.06 Corporate Indenture Trustee Required; Eligibility**

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

**9.07 Resignation and Removal; Appointment of Successor**

(a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.

(b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(d) If at any time:

(i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

(ii) the Indenture Trustee becomes incapable of acting, or

(iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

(f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To

facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.

(h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

**9.08 Acceptance of Appointment by Successor**

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

**9.09 Merger, Conversion, Consolidation or Succession to Business**

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

**9.10 Trust Indenture Legislation**

(a) In this Article IX, the term "**applicable legislation**" means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or

a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.

(b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.

(c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

**9.11 Representations and Covenants of the Indenture Trustee**

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;

(c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

**9.12 Indenture Trustee's Application for Instructions from the Issuer**

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such

application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

**9.13 Appointment of Co-Trustee or Separate Indenture Trustee**

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any **relevant** jurisdiction ~~in which any part of the Issuer's property may at the time be located~~, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.

(b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as

effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

**9.14 Preservation of Information; Communications to Debtholders**

(a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).

(b) If three or more Debtholders of any **Class,** Series~~, Class~~ or Tranche (hereinafter referred to as "**applicants**") (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such **Class,** Series~~, Class~~ or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or

(ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable **Classes,** Series~~, Classes~~ and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

(c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

## 9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

## 9.16 Paying Agent

(a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

(b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.

(c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:

(i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;

(ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;

(iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;

(v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and

(vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on any amounts contemplated under this Indenture of any

applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

## ARTICLE X
## MEETINGS

### 10.01 Conduct of Meetings

Meetings of Debtholders of any **Class,** Series~~, Class~~ or Tranche, of all ~~Series of~~ Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

(a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular **Class,** Series~~, Class~~ or Tranche, of all ~~Series of~~ Issuer Funding Obligations**, [of Controlling Class Obligations of a Series]** or of all Controlling Class Obligations **(each of such groups of Debtholders being a "Debtholder Group")**, as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, convene a meeting of the Debtholders of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.

(b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the ~~Series, Class or Tranche~~**applicable Debtholder Group** to which such meeting relates~~, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~ and to the Issuer, unless the meeting has been

called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

(c) At any meeting of ~~the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**a Debtholders Group**, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the ~~Series, Class or Tranche, of all Series of~~ Issuer Funding Obligations ~~or of all Controlling Class Obligations, as the case may be,~~**of the applicable Debtholder Group** entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** then and there represented in person or by proxy and entitled to vote at such meeting.

(d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.

(e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the

Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of ~~that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**the applicable Debtholder Group**. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

**10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution**

(a) In addition to any powers hereinbefore given, Debtholders of a **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:

(i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such **Class,** Series~~, Class~~ or Tranche or by the Related Funding Obligation Agreement;

(ii) sanction, insofar as they apply to the **Class,** Series~~, Class~~ or Tranche, the release of the Issuer from its covenants and obligations hereunder;

(iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such **Class,** Series~~, Class~~ or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such **Class,** Series~~, Class~~ or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;

(iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the **Class,** Series~~, Class~~ or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized

by such Ordinary Resolution; provided that no such assent shall be necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

(v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations.

(b) In addition to any powers hereinbefore given, Debtholders of ~~all~~**the** Controlling Class Obligations shall by Extraordinary Resolution have the power to:

(i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

(ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;

(iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;

(iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

(v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

(vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all ~~Series~~**Classes** of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;

(vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable

bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

(viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and

(x) permit the creation of any Lien on the Collateral that is prior to the Security Interest ~~(other than Permitted Liens)~~.

(c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

**10.03 Extraordinary Resolution**

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations~~**Debtholder Group** which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

**10.04 Declaration by Chairman of Result of Vote**

At any meeting of the Debtholders of any ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations,~~**Debtholder Group** in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

**10.05 Minutes**

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

**10.06 Signed Instruments**

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

**10.07 Persons Who May Attend**

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

**10.08 Binding Effect of Resolutions**

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** will be binding upon all of the Debtholders of such ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

**10.09 Notes Regarded as Not Outstanding for Certain Purposes**

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that **Class,** Series~~, Class~~ or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that **Class,** Series~~, Class~~ or Tranche.

## ARTICLE XI
## SUPPLEMENTAL INDENTURES

**11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors**

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or

(b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations; or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(d) to provide for the issuance of any Series~~, Class~~ or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any **Class,** Series~~, Class~~ or Tranche; or

(e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or

(f) to add any additional Events of Default in respect of any or all **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations; or

(g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or

(h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or

(i) to provide for additional ~~or alternative~~ forms of Credit Enhancement for any **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations; or

(j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or

(k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or

(l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such

amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

**11.02 Supplemental Indentures and Amendments with Consent of Debtholders**

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such

amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

(a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;

(b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the ~~Adjusted~~ Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

(c) reduce the amount of a Discount Note payable upon its acceleration;

(d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any **Class,** Series~~, Class~~ or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;

(e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;

(f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or

(g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such **Class,** Series **or Tranche** with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

### 11.03 Execution of Amendments and Supplemental Indentures

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section

9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

### 11.04 Effect of Amendments and Supplemental Indentures

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

### 11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

## ARTICLE XII
## REPRESENTATIONS AND WARRANTIES OF THE ISSUER

### 12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular **Class,** Series~~, Class~~ or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

(a) The Issuer is a Financing Entity.

(b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.

(c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program

Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.

(d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.

(f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.

(g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.

(h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

## ARTICLE XIII
## COVENANTS OF THE ISSUER

### 13.01 Payment of Principal and Interest

With respect to each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

### 13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the ~~Refinancing~~**redemption, repayment or repurchase** of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

### 13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer

will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more **Classes,** Series~~, Classes~~ or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any **Class,** Series~~, Class~~ or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints the ~~[■]~~[7] **Indenture Trustee**, as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

**13.04 Legal Existence**

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

**13.05 Separateness Covenants**

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

(a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);

(b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;

(c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;

[7] ~~OPG to confirm.~~

(e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;

(f) ~~[~~prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;~~]~~[8]

(g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;

(h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

(i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;

(j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and

(k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

**13.06 Compliance with Laws**

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

**13.07 Performance of Obligations**

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.

(b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others

[8] ~~To discuss financial statement requirements.~~

that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.

(c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

**13.08 Funding Obligations**

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

**13.09 Financial Statements**

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited ~~[consolidated~~ financial statements of the Issuer~~]~~ for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, ~~[~~unaudited ~~consolidated~~ financial statements of the Issuer~~]~~ for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.[9]

**13.10 Statement as to Compliance**

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

(a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and

(b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year **and that no Event of Default has occurred (without regard to any grace period or requirement of notice)**, or, if there has been a material default in the fulfillment of any such condition or covenant **or an Event of Default has occurred** (without regard to any grace

[9] ~~To discuss financial statement requirements.~~

period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

**13.11 Payment Instruction**

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

**13.12 Notice of Events of Default**

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

**13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors**

(a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:

(i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such **Classes,** Series~~, Classes~~ or Tranches as of such date, and

(ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.

(b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

**13.14 Other Positive Covenants**

The Issuer will:

(a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each

applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;

(b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;

(c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

(d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

### 13.15 Rule 144A Information

For so long as Notes of any **Class,** Series~~, Class~~ or Tranche are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to

provide to any Noteholder of such **Class,** Series~~, Class~~ or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

### 13.16 Further Instruments and Acts

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

### 13.17 No Other Business

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

### 13.18 Amendments to Program Agreements

(a) The Issuer will not:

(i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or

(ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.

(b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

### 13.19 Issuer May Consolidate, Etc., Only on Certain Terms

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a "**transaction**"), unless:

(a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;

(b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

(c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;

(d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and

(e) any action that is necessary to maintain the Security Interest shall have been taken.

**13.20 Successor Substituted**

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

### 13.21 Guarantees, Loans, Advances and Other Liabilities

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

### 13.22 Capital Expenditures

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

### 13.23 Restricted Payments

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

### 13.24 No Borrowing

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

### 13.25 Other Negative Covenants

The Issuer will not:

(a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);

(b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;

(c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;

(e) release any security or guarantee in respect of the Collateral;

(f) voluntarily dissolve or liquidate; or

(g) take any action that would cause it to be treated as engaged in a "trade or business within the United States" within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

### 13.26 Indenture Trustee May Perform Covenants

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

## ARTICLE XIV
## MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

### 14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

### 14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

## ARTICLE XV
## NOTICES

### 15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

~~[Issuer]~~**Fair Hydro Trust**
c/o Ontario Power Generation Inc.
~~100~~**700** University Avenue~~, 11th Floor~~
Toronto, Ontario M5~~J 2Y~~**G** 1**X6**

Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Issuer Trustee]~~**Computershare Trust Company of Canada**, in its capacity as Issuer Trustee for ~~[Issuer]~~
~~[Address]~~

**Fair Hydro Trust**
100 **University Avenue**, 11th Floor
**Toronto, Ontario M5**J 2Y**1**

Attention: [■]
Fax: (416) [■]
Email: [■]

~~[■]~~

**15.02 Notice to the Indenture Trustee**

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

**BNY Trust Company of Canada**
**One York Street, 6th Floor**
**Toronto, Ontario M5J 0B6**

~~**[Indenture Trustee]**~~
~~**[Address]**~~
Attention: ~~[■]~~**Corporate Trust Services**
Fax: ~~[■]~~**(416) 360-1711**

**15.03 Notice to Noteholders**

(a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile

or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.

(b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any **Class,** Series~~, Class~~ or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.

(c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.

(d) With respect to any Series~~, Class~~ or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series~~, Class~~ or Tranche.

(e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

### 15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

### 15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to

give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

**15.06 Change of Address**

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

## ARTICLE XVI
## MISCELLANEOUS

**16.01 No Petition**

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

**16.02 Withholding Rights**

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

**16.03 ~~16.02~~ U.S. Tax Treatment**

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

**16.04 ~~16.03~~ Alternate Payment Provisions**

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

**16.05 ~~16.04~~ Final Distribution**

(a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any **Class,** Series~~, Class~~ or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such **Class,** Series~~, Class~~ or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such **Class,** Series~~, Class~~ or Tranche specifying (i) the date upon which final payment of such **Class,** Series~~, Class~~ or Tranche will be made upon presentation and surrender of Notes of such **Class,** Series~~, Class~~ or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.

(b) Notwithstanding a final distribution to the Noteholders of any **Class,** Series~~, Class~~ or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any ~~Issuer~~**Series** Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any ~~Issuer~~**Series** Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

**16.06 ~~16.05~~ Force Majeure**

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by,

directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**16.07 ~~16.06~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Indenture.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

~~[ISSUER]~~**COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of FAIR HYDRO TRUST**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

~~[INDENTURE TRUSTEE]~~**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee and not in its individual capacity

By:

Name:
Title:

**Schedule A**
**DEFINED TERMS**

"**Act**" means *Ontario Fair Hydro* ***Plan*** *Act, 2017*.

"**Action**" has the meaning specified in Section 1.04.

~~"**Adjusted Outstanding Dollar Principal Amount**" means, at any time with respect to any Series, Class or Tranche of Notes, the Outstanding Dollar Principal Amount of all Outstanding Notes of such Series, Class or Tranche at such time, less any funds on deposit in any Issuer Account or the related Sub-Account, as applicable, for the benefit of such Series, Class or Tranche at such time.~~

"**Adverse Effect**" means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default~~, (b~~ **or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to this Indenture or any Program Agreement, (c**) materially adversely affect the amount or timing of payments to be made to the Specified Creditors **(other than Debtholders and Derivative Counterparties)** pursuant to this Indenture or any Program Agreement, or (~~c~~**d**) adversely affect the Security Interest ~~unless otherwise permitted by this~~**and the rights and remedies of the** Indenture~~.~~ **Trustee in respect thereof.**

"**Affected Party**" has the meaning specified in the applicable Derivative Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

"**Authorized Newspaper**" means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any **Class,** Series~~, Class~~ or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

"**Available Collections**" means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section **[3.3]** of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in ~~the Collection Account, any Finance Reserve Account and any Capital Reserve~~**any Issuer** Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; ~~and~~ (b) the IESO Carrying Cost Payments**; and (c) amounts received by the Issuer pursuant to Derivative Agreements**.

"**Bearer Note**" means a Note in bearer form.

"**Benefit Plan**" means an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a "plan" described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" by reason of an employee benefit plan's investment in the entity.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by applicable law, regulation or executive order to be closed~~, or (b) for purposes of any particular Series, Class or Tranche of Notes, any other day specified in the applicable Supplemental Indenture~~.

"**Canadian Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes ~~of any Tranche~~ issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

~~"**Capital Reserve Account**" has the meaning specified in subsection 7.02(c).~~

"**Certificate of Authentication**" means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

"**Chairman**" has the meaning specified in subsection 10.01(d).

"**Change of Law Protection Agreement**" means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

"**Class**" ~~means, with respect to any Issuer Funding Obligation, the class specified in the Related Funding Obligation Agreement~~ **or "Class of Issuer Funding Obligations" means the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations [and the Derivative Funding Obligations], each of which shall be a class of Issuer Funding Obligations.**

"**Closing Date**", with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

"**Collateral**" has the meaning specified in Section 2.01.

"**Collection Account**" has the meaning specified in subsection 7.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Controlling Class Obligations** means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at ~~[■]; Telephone: [■]; Facsimile: [■],~~**One York Street, 6th Floor, Toronto, Ontario M5J 0B6,** or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

"**Credit Enhancement**" means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as "Credit Enhancement" for purposes hereof.

"**Credit Enhancement Agreement**" means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

"**Credit Enhancer**" means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

"**DBRS**" means DBRS Limited, or any successor thereof.

"**Debtholder**" means a Noteholder or a Lender.

**"Debtholder Group" has the meaning specified in subsection 10.01(a)**

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Issuer was established.

"**Defaulting Party**" has the meaning specified in the applicable Derivative Agreement.

**"Deferred Principal Accumulation Amount" means, on any Payment Date, the amount by which the aggregate of the Principal Accumulation Amount (Senior), the Principal Accumulation Amount (Subordinated) and the Principal Accumulation Amount (Junior Subordinated) for such Payment Date determined without reference to any Refinancing Notices is greater than the amount on deposit in the Principal Accumulation Account.**

"**Depository**" means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

"**Derivative Counterparty**" means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, Derivative Agreements.

"**Discount Note**" means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

"**Dollar**," "**$**" or "**Cdn. $**" means Canadian dollars.

"**Electronic Methods**" means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

"**Eligible Deposit Account**" means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by

S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's and, if DBRS provides a rating thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody's, S&P and DBRS, if rated by DBRS;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this

definition as a "broker/dealer"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A1" from Moody's and also has a long-term unsecured debt rating of at least "A" from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's; and (3) no securities or investments described in clauses (b) through (d) above that have maturities of more than 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's.

"**ERISA**" means the *Employee Retirement Income Security Act* of 1974, as amended.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Date**" means, with respect to any **Class,** Series~~, Class~~ or Tranche of Notes, the latest of:

(a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;

(b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and

(c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

"**Extraordinary Resolution**" means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Indenture.

**"Fair Hydro Regulations" means the regulations made under the Act including Ontario regulations 206/17 and 195/17**

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Indenture.

~~"**Finance Reserve Account**" has the meaning specified in subsection 7.02(d).~~

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act as of the date of this Indenture.

"**Financing Plan**" has the meaning ascribed to the term "financing plan" in the Act as of the date of this Indenture.

"**Foreign Currency**" means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

"**Foreign Currency Note**" means a Note denominated in a Foreign Currency.

"**Foreign Depository**" means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

"**Funding Obligation Agreement**" means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

"**Funding ~~Obligations~~Obligation**" has the meaning ascribed to the term "funding ~~obligations~~**obligation**" in the Act as of the date of this Indenture.

"**Global Note**" means any Note issued pursuant to Section 3.04.

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

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

"**IESO Carrying Cost Payments**" means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Indenture**" or "**this Indenture**" means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" means and includes such Person.

"**Initial Currency Specific Dollar Principal Amount**" means with respect to a ~~Class~~**Series** or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

"**Initial Dollar Principal Amount**" means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a **Class,** Series~~, Class~~ or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such **Class,** Series~~, Class~~ or Tranche plus the aggregate initial principal amount of any additional Notes of such **Class,** Series~~, Class~~ or Tranche, and (b) with respect to a **Class,** Series~~, Class~~ or Tranche of Discount Notes~~ or~~ that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

**"Interest Accrual Amount (Junior Subordinated)" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(xiii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(a).**

**"Interest Accrual Amount (Senior)" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(iii)(A).**

**"Interest Accrual Amount (Subordinated)" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(viii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(b).**

**"Interest Accumulation Account" has the meaning specified in subsection 7.02(b).**

**"Interest Payment Date" means each Business Day which is an "Interest Payment Date" in respect of any Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.**

"**Internal Revenue Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act as of the date of this Indenture.

"**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Indenture.

"**Issuer**" has the meaning specified in the first paragraph of this Indenture.

"**Issuer Accounts**" means, collectively, the ~~Collection Account, the Refinancing Account, all Finance Reserve Accounts, all Capital Reserve~~**Program Accounts and the Series** Accounts and ~~all Supplemental Reserve Accounts,~~ including any Sub-Accounts thereof.

"**Issuer Certificate**" means a certificate (including an Officer's Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series~~, Class~~ or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

"**Issuer Funding Obligations**" means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

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

"**Junior Subordinated Borrowings**" means Borrowings that have been designated as "Junior Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

"**Junior Subordinated Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Junior Subordinated Notes" in the Related Supplemental Indenture.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

"**Liquidity Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a "Liquidity Agreement" for the purposes hereof.

"**Loan Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Issuer.

"**Manager**" means OPG, in its capacity as manager of the Issuer under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Monthly Period**" means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

"**Moody's**" means Moody's Investors Service, Inc., or any successor thereof.

"**Non-resident**" means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

"**Note**" or "**Notes**" means any note or notes of any **Class,** Series~~, Class~~ or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

"**Noteholder**" means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

"**Note Owner**" means the beneficial owner of an interest in a Global Note.

"**Note Purchase Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

"**Note Register**" has the meaning specified in subsection 4.05(a).

"**Note Registrar**" means the Person who keeps the Note Register.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to

any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust **or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust**).

"**Officer's Certificate**" means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer's knowledge and belief.

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

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

"**Ordinary Resolution**" has the meaning specified in subsection 10.01(e).

"**Outstanding**" means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;

(b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and

(c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to "Notes" will be deemed to be

references to "Outstanding Notes". In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, **Senior** Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only **Senior** Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. **Senior** Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee's right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

"**Outstanding Currency Specific Dollar Principal Amount**" means at any time, with respect to any ~~Class or Tranche of~~ Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such ~~Class~~**Series** or Tranche at such time, less the amount of any ~~withdrawals from any Issuer Account or Sub-Account for such Class or Tranche of Notes for payment~~**payments** of principal to the holders of such ~~Class or Tranche~~**Series** of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such ~~Class or Tranche~~**Series** of Notes due to the issuance of additional Notes of such ~~Class or Tranche pursuant to Article V~~**Series**.

"**Outstanding Dollar Principal Amount**" means at any time:

(a) in respect of Notes, either:

(i) with respect to any **Class,** Series~~, Class~~ or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such **Class,** Series~~, Class~~ or Tranche at such time, less the amount of any ~~withdrawals from any Issuer Account or Sub-Account for such Series, Class or Tranche of Notes for payment~~**payments** of principal to the holders of such **Class,** Series~~, Class~~ or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or

(ii) with respect to any Series~~, Class~~ or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series~~, Class~~ or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series~~, Class~~ or Tranche or the applicable Derivative Counterparty~~ and accretions of principal~~, each pursuant to the Related Supplemental Indenture;

plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such **Class,** Series~~, Class~~ or Tranche of Notes due to the issuance of additional Notes of such **Class,** Series~~, Class~~ or Tranche pursuant to Article V; and

(b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

"**Payment Date**" means~~, with respect to any Series of Issuer Funding Obligations,~~ the 15th day of each calendar month~~ or the date otherwise specified in the Related Funding Obligation Agreement~~.

"**Payment Instruction**" means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

"**Permanent Global Note**" has the meaning specified in subsection 3.05(a).

"**Permitted Liens**" means:

(a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;

(b) the Lien of any Indenture Trustee, as provided in Section 9.05;~~ and~~

(c) the Security Interest**; and**

**(d) any Lien created pursuant to a Co-Owner Agreement**.

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

"**Place of Payment**" means, with respect to any **Class,** Series~~, Class~~ or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such **Class,** Series~~, Class~~ or Tranche of Notes in accordance with the provisions of Article V.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario).

"**Predecessor Notes**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

**"Principal Accumulation Account" has the meaning specified in subsection 7.02(c).**

**"Principal Accumulation Amount" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date occurring on or after the Principal Accumulation Date for such Series, the amount specified for such Payment Date in the Funding Obligation Agreement in respect of such Series plus any amounts specified in the Funding Obligation Agreement in respect of such Series in respect of prior Payment Dates after the Principal Accumulation Date for such Series which were not deposited to the Principal Accumulation Account; *provided* that if the Issuer has delivered a Refinancing Notice in respect of such Series pursuant to Section 7.09, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such Refinancing Notice.**

**"Principal Accumulation Amount (Junior Subordinated)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Junior Subordinated Funding Obligations for such Payment Date.**

**"Principal Accumulation Amount (Senior)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Senior Funding Obligations for such Payment Date.**

**"Principal Accumulation Amount (Subordinated)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Subordinated Funding Obligations for such Payment Date.**

**"Principal Accumulation Date" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.**

**"Principal Payment Date" means each Business Day which is a "Principal Payment Date" under a Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.**

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Principal Payment Due Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

**"Program Account" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account and the Refinancing Account.**

"**Program Agreements**" means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

**"Program Cash Reserve Account" has the meaning specified in subsection 7.02(g).**

**"Program Cash Reserve Balance" means, at any time, the amount on deposit in the Program Cash Reserve Account.**

**"Program Cash Reserve Required Amount (Junior Subordinated)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.**

**"Program Cash Reserve Required Amount (Senior)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Senior Funding Obligations after giving effect to all settlements on such Payment Date.**

**"Program Cash Reserve Required Amount (Subordinated)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.**

**"Program Cash Reserve Required Amount (Total)" means, on any Payment Date, an amount equal to the sum of the Program Cash Reserve Required Amount (Senior), the Program Cash Reserve Required Amount (Subordinated) and the Program Cash Reserve Required Amount (Junior Subordinated).**

**"Program Cash Reserve Required Deposit Amount (Junior Subordinated)" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Total) exceeds the Program Cash Reserve Balance.**

**"Program Cash Reserve Required Deposit Amount (Senior)" means, on any Payment Date, the amount by which the Program Cash Reserve Required Amount (Senior) exceeds the Program Cash Reserve Balance.**

**"Program Cash Reserve Required Deposit Amount (Subordinated)" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Senior) plus the Program Cash Reserve Required Amount (Subordinated) exceeds the Program Cash Reserve Balance.**

"**Province**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

"**Rating Agency**" means, with respect to any Outstanding **Class,** Series~~, Class~~ or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

"**Rating Agency Condition**" means, unless otherwise specified in the Related Supplemental Indenture for any Series~~, Class~~ or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any

specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any Outstanding Notes immediately before the taking of such action, **[or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action]**, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

"**Record Date**" means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Indenture.

"**Refinancing Account**" has the meaning specified in subsection 7.02(b).

**"Refinancing Notice" means a notice substantially in the form of Exhibit 2.**

"**Registered Note**" means a Note issued in registered form.

"**Registered Noteholder**" means a Noteholder of a Registered Note.

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"**Related**" is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

(a) "Credit Enhancement Agreement": a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;

(b) "Funding Obligation Agreements": the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;

(c) "Liquidity Agreement": a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a ~~Class~~**Series** or Tranche of such Issuer Funding Obligations constituting Notes;

(d) "Loan Agreement": a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and

(e) "Supplemental Indenture": a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

**"Required Principal Accumulation Amount (Senior)" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Senior) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.**

**"Required Principal Accumulation Amount (Subordinated)" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Subordinated) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.**

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

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

"**Securities Exchange Act**" means the United States Securities Exchange Act of 1934, as amended from time to time.

"**Security Interest**" means the Lien granted pursuant to Section 2.01.

"**Senior Borrowings**" means Borrowings that have been designated as "Senior Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Senior Funding Obligations**" means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

**"Senior Principal Shortfall" has the meaning specified in subsection 7.07(b).**

"**Senior Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Senior Notes" in the Related Supplemental Indenture.

"**Series**" means, with respect to any **Class of** Issuer Funding Obligation, the Series **of the Class** specified in the Related Funding Obligation Agreement.

**"Series Account" means each Series Finance Reserve Account and each Series Capital Account.**

**"Series Finance Reserve Account" has the meaning specified in subsection 7.02(g).**

**"Series Capital Account" has the meaning specified in subsection 7.02(f).**

"**Servicer**" has the meaning specified in the Master Transfer and Servicing Agreement.

"**Servicer Default**" has the meaning ascribed thereto in Section **[7.1]** of the Master Transfer and Servicing Agreement.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

"**Stated Principal Amount**," has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

"**Sub-Account**" means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

**"Subordinated/Senior Principal Shortfall" has the meaning specified in subsection 7.07(a).**

"**Subordinated Borrowings**" means Borrowings that have been designated as "Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

"**Subordinated Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Subordinated Notes" in the Related Supplemental Indenture.

"**Supplemental Indenture**" means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any ~~Classes and~~ Tranches of Notes belonging to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

~~"**Supplemental Reserve Account**" means the trust account or accounts designated as such and established pursuant to subsection 7.02(e).~~

"**Tax**" has the meaning ascribed to the term "tax" in the regulations promulgated under the Act ~~[~~as of the date of this Indenture.~~]~~.

"**Temporary Global Note**" has the meaning specified in Section 3.05(a).

"**Termination Payment**" ~~has the meaning specified in the applicable~~**means all amounts payable upon early termination of any** Derivative Agreement **calculated in accordance with the terms of such Derivative Agreeement**.

"**Terms Document**" means, with respect to any ~~Class or~~ Tranche of Notes, a supplement to the Related Supplemental Indenture.

"**Tranche**" means, with respect to any ~~Class~~**Series** of Notes, Notes of such ~~Class~~**Series** which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Underwriting Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

"**United States Person**" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**U.S. Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes ~~of any Tranche~~ issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

"**U.S. Securities Act**" means the United States Securities Act of 1933, as amended from time to time.

"**Warehouse Facility Agreement**" means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit

facility.

**EXHIBIT 1**
**FORM OF PAYMENT INSTRUCTIONS**

See Attached.

**EXHIBIT 2**
**FORM OF REFINANCING NOTICE**

**See Attached.**

**[NTD: Notice must specify Series and the amount of the Principal Accumulation Amounts specified in the related Supplemental Indenture that will be repaid with the proceeds of the Refinancing.]**

Document comparison by Workshare Compare on November-08-17 8:59:29 AM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\#23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture.docx |
| Description | #23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture |
| Document 2 ID | file://C:\Users\bsaulnie\Desktop\Province\Master Trust Indenture (November 7th Rating Agency Draft).DOCX |
| Description | Master Trust Indenture (November 7th Rating Agency Draft) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 649 |
| Deletions | 635 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 1300 |

**Draft Date: November 7, 2017**

# MASTER TRANSFER AND SERVICING AGREEMENT

between

**[FINANCING ENTITY]**
as Issuer

- and -

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

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION ..... 2**
1.1 Definitions ..... 2
1.2 Sections and Headings ..... 7
1.3 Extended Meanings ..... 7

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET ..... 8**
2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset ..... 8
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset ..... 9

**ARTICLE 3 ROLE OF THE SERVICER ..... 11**
3.1 Designation of Servicer ..... 11
3.2 Forecasts and Other Information ..... 11
3.3 Clean Energy Adjustments and Electricity Vendors ..... 11
3.4 Reporting ..... 13
3.5 Remittances ..... 14
3.6 Limits to Obligations ..... 14
3.7 Servicing and Maintenance Standards ..... 15
3.8 Appointments ..... 15
3.9 Term ..... 16
3.10 Resignation of Servicer ..... 16
3.11 Mergers ..... 16
3.12 The IESO Not to Resign as Servicer ..... 17
3.14 IESO Security for CEA Remittances ..... 17

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO ..... 18**
4.1 Representations and Warranties ..... 18
4.2 Survival ..... 20

**ARTICLE 5 COVENANTS OF THE IESO ..... 20**
5.1 Existence ..... 20
5.2 No Transfer or Liens ..... 20
5.3 Notice of Liens ..... 20
5.4 Compliance with Law ..... 21
5.5 Covenants Related to the Investment Interest ..... 21
5.6 Non-petition Covenants ..... 21
5.7 Disclosure ..... 21
5.8 Further Assurances ..... 22
5.9 Access to Certain Records and Information ..... 22
5.10 Maintenance of Operations ..... 22
5.11 Acknowledgement of Indenture ..... **Error! Bookmark not defined.**

**ARTICLE 6 IESO INDEMNITIES ..... 22**
6.1 Liability of the IESO; Indemnities ..... 22

**TABLE OF CONTENTS**
(continued)

**Page**

**ARTICLE 7 SERVICER DEFAULT ..... 24**
7.1 Servicer Default ..... 24
7.2 Appointment of Successor Servicer ..... 25
7.3 Waiver of Past Defaults ..... 26
7.4 Notice of Servicer Default ..... 26
7.5 Cooperation with Successor Servicer ..... 26
**ARTICLE 8 MISCELLANEOUS ..... 26**
8.1 Amendment ..... 26
8.2 Withholding Rights ..... 27
8.3 No Partnership ..... 27
8.4 Notices ..... 27
8.5 Assignment ..... 28
8.6 Limitations on Rights of Third Parties ..... 28
8.7 Severability ..... 28
8.8 Separate Counterparts; Electronic Delivery ..... 28
8.9 Governing Law ..... 28
8.10 Grant of Security Interest to Indenture Trustee ..... 28
8.11 Limitation of Liability of the Issuer Trustee ..... 29
8.12 Waivers ..... 30

**EXHIBIT**

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

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

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

(the "**Issuer**")

- and -

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

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

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

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

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

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

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

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

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

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

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

"**Act**" has the meaning ascribed thereto in the recitals;

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

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

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

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

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

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

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

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

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

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

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

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

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

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

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

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

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

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

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

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

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

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

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

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

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

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

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

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

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

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

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

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

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

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

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

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

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

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

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

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

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

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

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

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

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

"**Records**" has the meaning ascribed thereto in Section 7.1;

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

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

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

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

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

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

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

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

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

"**Termination Event**" has the meaning ascribed thereto in Section 3.9;

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

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

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

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

### 1.2 Sections and Headings

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

### 1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

### 2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a

binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

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

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO

officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

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

### 3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a); and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, that is in the possession or control of the Transferor or which is available on request to the Transferor, can lawfully be provided and can be provided without incurring material incremental expense.

### 3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments:

(i) provide guidance to the Electricity Vendors with respect to their obligations under the Act to establish a segregated account into which

Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) provide a suggested form of Electricity Vendor Billing Period Report to be used by such Electricity Vendors;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to such forms and guidance.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and

the amount received pursuant to Section 3.3(d), and such other discrepancies as may be agreed by the parties hereto, acting reasonably;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report, or

(iv) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

**3.4 Reporting**

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) Report monthly to the Issuer any failure on the part of Electricity Vendors to deliver, remit or certify referred to in (j)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the explanation provided therefor by the Electricity Vendor.

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

**3.5 Remittances**

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

**3.6 Limits to Obligations**

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.6.

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

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO;

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to

the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

**3.7 Servicing and Maintenance Standards**

Subject to Section 3.6, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

**3.8 Appointments**

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.10.

### 3.9 Term

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

### 3.10 Resignation of Servicer

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

### 3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the

other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

### 3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

### 3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14$^{th}$] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

### 3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors

which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

Subject to Section 3.6, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or

any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

**4.2 Survival**

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

## ARTICLE 5
## COVENANTS OF THE IESO

**5.1 Existence**

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

**5.2 No Transfer or Liens**

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

**5.3 Notice of Liens**

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

## 5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

## 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

## 5.6 Non-petition Covenants

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

## 5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda,

prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

### 5.8 Further Assurances

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

### 5.9 Access to Certain Records and Information

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

### 5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount

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

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.10 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

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

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

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

**7.2 Appointment of Successor Servicer**

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the

Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

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

**7.3 Waiver of Past Defaults**

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

**7.4 Notice of Servicer Default**

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

**7.5 Cooperation with Successor Servicer**

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

## ARTICLE 8
## MISCELLANEOUS

**8.1 Amendment**

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

## 8.2 Withholding Rights

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

## 8.3 No Partnership

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

## 8.4 Notices

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

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

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

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

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

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

Attention: ■
Email: ■

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

**8.5 Assignment**

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

**8.6 Limitations on Rights of Third Parties**

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**8.7 Severability**

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

**8.8 Separate Counterparts; Electronic Delivery**

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

**8.9 Governing Law**

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

**8.10 Grant of Security Interest to Indenture Trustee**

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors

against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

**8.11 Limitation of Liability of the Issuer Trustee**

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

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

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

their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

**8.12 Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

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

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

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

Attention: ■
Email: ■

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

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

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

[**NTD: form to be settled]**

**EXHIBIT C**

**FORM OF MONTHLY CARRYING COSTS STATEMENT**

See Attached

**MONTHLY CARRYING COSTS STATEMENT**

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

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

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

# MASTER TRANSFER AND SERVICING AGREEMENT

between

**[FINANCING ENTITY]**
as Issuer

- and -

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

**Dated as of ■, 2017**

## TABLE OF CONTENTS

**Page**


**ARTICLE 1 INTERPRETATION** **2**
1.1 Definitions 2
1.2 Sections and Headings 7
1.3 Extended Meanings 7

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET** **8**
2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset 8
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset 9

**ARTICLE 3 ROLE OF THE SERVICER** **11**
3.1 Designation of Servicer 11
3.2 ~~Forecast of Electricity Consumption~~ ~~11~~**Forecasts and Other Information** **11**
3.3 Clean Energy Adjustments and Electricity Vendors 11
3.4 Reporting 13
3.5 Remittances 14
3.6 Limits to Obligations 14
3.7 Servicing and Maintenance Standards 15
3.8 Appointments 15
3.9 Term ~~15~~**16**
3.10 Resignation of Servicer 16
3.11 Mergers 16
3.12 The IESO Not to Resign as Servicer 17
3.14 IESO Security for CEA Remittances ~~17~~**18**

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO** **18**
4.1 Representations and Warranties 18
4.2 Survival 20

**ARTICLE 5 COVENANTS OF THE IESO** **20**
5.1 Existence 20
5.2 No Transfer or Liens 20
5.3 Notice of Liens ~~20~~**21**
5.4 Compliance with Law ~~20~~**21**
5.5 Covenants Related to the Investment Interest ~~20~~**21**
5.6 Non-petition Covenants 21
5.7 Disclosure ~~21~~**22**
5.8 Further Assurances ~~21~~**22**
5.9 Access to Certain Records and Information ~~21~~**22**
5.10 Maintenance of Operations 22
**5.11** Acknowledgement of Indenture **22**

**ARTICLE 6 IESO INDEMNITIES** **22**

**TABLE OF CONTENTS**
(continued)

**Page**


6.1 Liability of the IESO; Indemnities ..... 22

**ARTICLE 7 SERVICER DEFAULT** ..... ~~23~~24
7.1 Servicer Default ..... ~~23~~24
7.2 Appointment of Successor Servicer ..... ~~25~~26
7.3 Waiver of Past Defaults ..... ~~25~~26
7.4 Notice of Servicer Default ..... ~~26~~27
7.5 Cooperation with Successor Servicer ..... ~~26~~27

**ARTICLE 8 MISCELLANEOUS** ..... ~~26~~27
8.1 Amendment ..... ~~26~~27
8.2 Withholding Rights ..... ~~26~~27
8.3 No Partnership ..... ~~26~~27
8.4 Notices ..... ~~26~~28
8.5 Assignment ..... ~~27~~28
8.6 Limitations on Rights of Third Parties ..... ~~27~~28
8.7 Severability ..... ~~28~~29
8.8 Separate Counterparts; Electronic Delivery ..... ~~28~~29
8.9 Governing Law ..... ~~28~~29
8.10 Grant of Security Interest to Indenture Trustee ..... ~~28~~29
8.11 Limitation of Liability of the Issuer Trustee ..... ~~28~~29
8.12 Waivers ..... ~~29~~30


**EXHIBIT**


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

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

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

(the "**Issuer**")

- and -

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

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

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

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

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

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

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

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

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

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

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

"**Act**" has the meaning ascribed thereto in the recitals;

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

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

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

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

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

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

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

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

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

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

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

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

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

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

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

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to **by the applicable Electricity Vendor**;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

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

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

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

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

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

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

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

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

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

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

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

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

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

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

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

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

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

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

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

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

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

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

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

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

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

**"Prescribed Period" has the meaning ascribed thereto in Section 3.13(a);**

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

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

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

"**Records**" has the meaning ascribed thereto in Section 7.1;

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

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

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

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

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

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

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

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

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

"**Termination Event**" has the meaning ascribed thereto in Section 3.9;

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

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

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

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

### 1.2 Sections and Headings[1]

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

### 1.3 Extended Meanings

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

[1] ~~Torys to conform boilerplate provisions, as applicable, across all transaction documents.~~

means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

### 2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

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

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same

force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) **immediately** after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

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

### 3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2 (a); and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, **that is in the possession or control of the Transferor or** which is ~~reasonably~~ available **on request** to the Transferor, can lawfully be provided and can be provided without incurring material incremental expense.

**3.3 Clean Energy Adjustments and Electricity Vendors**

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments:

(i) provide guidance to the Electricity Vendors with respect to their obligations under the Act to establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) provide a suggested form of Electricity Vendor Billing Period Report to be used by such Electricity Vendors;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to such forms and guidance.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d)**, and such other discrepancies as may be agreed by the parties hereto, acting reasonably**;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report, or

(iv) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the

benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

**3.4 Reporting**

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) Report monthly to the Issuer any failure on the part of Electricity Vendors to deliver, remit or certify referred to in (j)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the explanation provided therefor by the Electricity Vendor.

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

**3.5 Remittances**

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ~~[five]~~**ten** Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ~~[five]~~**ten** Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received ~~during a Billing Period~~**on or subsequent to a Remittance Date** shall be remitted by the Servicer to the Collection Account no later than the ~~Remittance Date~~ immediately following ~~such Billing Period~~**Remittance Date**.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

### 3.6 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.6.

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

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO;

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

**(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the**

taking of any action pursuant to this Agreement or for good faith errors in judgment.

### 3.7 Servicing and Maintenance Standards

Subject to Section 3.6, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

### 3.8 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.10.

### 3.9 Term

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

### 3.10 Resignation of Servicer

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

assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

### 3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

### 3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

### 3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) ~~During the period~~**The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the** prescribed

~~by~~**period set out in the** Regulations (the "**Prescribed Period**")~~, the IESO shall, as required~~ **and agrees to comply with its obligations** under the Regulations~~,~~ **to** pay and remit **the Carrying Costs** to the Issuer on a monthly basis~~ the Carrying Costs~~.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly ~~Carry~~**Carrying** Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO**, and such entry shall be deemed to be a certification of the accuracy of the amount entered**.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

### 3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors~~,~~ **which are either not rated or are rated less than investment grade** to remit their Electricity Vendor CEA Collections.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

Subject to Section 3.6, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

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

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

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under~~,~~ **this Agreement** or the Act or the validity or enforceability of~~,~~ this Agreement ~~or the Act~~.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under~~,~~ **this Agreement or the Act** or the validity or enforceability of~~,~~ this Agreement ~~or the Act~~.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

**4.2 Survival**

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

## ARTICLE 5
## COVENANTS OF THE IESO

**5.1 Existence**

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

**5.2 No Transfer or Liens**

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest**, except for any Lien granted by the Issuer to the IESO**.

**5.3 Notice of Liens**

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

## 5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

## 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for ~~passive~~ investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

## 5.6 Non-petition Covenants

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

### 5.7 Disclosure

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

### 5.8 Further Assurances

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

### 5.9 Access to Certain Records and Information

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

### 5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

~~**5.11 Acknowledgement of Indenture**~~

~~The IESO acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Indenture.~~

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer~~, the Manager~~ and each of ~~their respective~~**its** trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed

counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.10 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

~~**[Note to Draft: The Indenture Trustee has been removed as a party to this Agreement on the understanding that a separate acknowledgement and indemnity will be entered into between the IESO and the Indenture Trustee in which the IESO acknowledges the Indenture Trustee's right to enforce this Agreement, and in which the IESO provides an similar indemnity to that above in favour of the Indenture Trustee on behalf of the Specified Creditors.]**~~

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

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

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three~~] [NTD: Rating Agencies will expect 2-3 days~~]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment

Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

**7.2 Appointment of Successor Servicer**

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and

liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

### 7.3 Waiver of Past Defaults

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

### 7.4 Notice of Servicer Default

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

### 7.5 Cooperation with Successor Servicer

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

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Amendment

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

### 8.2 Withholding Rights

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

## 8.3 No Partnership

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

## 8.4 Notices

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

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

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

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

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

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

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports

and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

### 8.5 Assignment

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

### 8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

### 8.7 Severability

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

### 8.8 Separate Counterparts; Electronic Delivery

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

### 8.9 Governing Law

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

## 8.10 Grant of Security Interest to Indenture Trustee

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

## 8.11 Limitation of Liability of the Issuer Trustee

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

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units

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

**8.12 Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

By:
Name:
Title:

By:
Name:
Title:

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

By:
Name:
Title:

By:
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

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

Attention: ■
Email: ■

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

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

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

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

DATED this ■ day of ■, 20■.

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

By:
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By:
Name:
Title:

By: _____
Name:
Title:

# EXHIBIT B

# FORM OF MONTHLY REPORT

See Attached

**MONTHLY REPORT**

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

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

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.4(a) of the Master Transfer and Servicing Agreement the Servicer hereby certifies in the date hereof and in respect of the period subsequent to the preceding Remittance Date, as follows:

| | Item | Amount |
|---|---|---|
| (A) | CEA Consumer Invoice Amounts: | $■ |
| (B) | Servicer CEA Receipts: | $■ |
| | Comprised of: | |
| | Electricity Vendor CEA Collections: | $■ |
| | IESO direct CEA collections: | $■ |
| (C) | Actual Monthly Consumption of Specified Consumers: | ■ |
| (D) | Balance of IESO Segregated Account: | $■ |

| ~~LDC Name~~ | ~~Billed Amount~~ | ~~Remitted Amount~~ | ~~Difference~~ |
|---|---|---|---|
| ~~LDC 1~~ | ~~$xx~~ | ~~$yy~~ | |
| ~~LDC 2~~ | | | |
| ~~LDC 70~~ | | | |

~~Shortfall $~~

~~Delinquency Amount $~~

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

~~DATED this ■ day of ■, 20■.~~

~~**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**~~
~~**as Servicer**~~

~~By:~~ _____
~~Name:~~
~~Title:~~

~~By:~~ _____
~~Name:~~
~~Title:~~

**EXHIBIT C**

**FORM OF MONTHLY CARRYING COSTS STATEMENT**

See Attached

## MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

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

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-08-17 9:02:13 AM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Master_Transfer_and_Servicing_Agreement (Osler_Torys comments on IESO_SE....docx |
| Description | Master_Transfer_and_Servicing_Agreement (Osler_Torys comments on IESO_SE... |
| Document 2 ID | file://C:\Users\bsaulnie\Desktop\Province\MTSA (November 7th Rating Agency Draft).DOCX |
| Description | MTSA (November 7th Rating Agency Draft) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 79 |
| Deletions | 139 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 222 |

**Draft Date: November 7, 2017**

# SECURITY AGREEMENT

**THIS AGREEMENT** made as of the ____ day of _____, 2017,

**BETWEEN:**

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

(hereinafter referred to as the "**Grantor**"),

**IN FAVOUR OF:**

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

(hereinafter referred to as the "**Secured Party**"),

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

**AND WHEREAS** the Grantor (together with the Secured Party, collectively referred to as the "**Parties**") has agreed to enter into a security agreement in favour of the Secured Party to secure payment of the Statutory Obligation;

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

## 1. INTERPRETATION

### 1.1 Defined Terms

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

(a) "**Account**" shall have the meaning attributed to such term in the PPSA;

(b) "**Business Day**" means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;

(c) "**Carrying Costs**" shall have the meaning attributed to the term "carrying costs" in the Regulation;

(d) "**Collateral**" shall have the meaning attributed to such term in Section 2.1;

**(e)** **"Electricity Vendor"** shall mean a licensed distributor and a licensed retailer, each as defined in the Ontario Fair Hydro Act.

(f) "**Money**" shall have the meaning attributed to such term in the PPSA;

(g) "**Permitted Liens**" means liens approved in writing by the Secured Party;

(h) "**PPSA**" means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;

(i) "**Proceeds**" means "proceeds", as defined in the PPSA, of the Collateral;

(j) **"Receiver"** shall have the meaning attributed to such term in Section 6.2 of this Agreement;

(k) "**Regulation**" shall have the meaning attributed to such term in the recitals hereto;

(l) "**Statutory Obligation**" shall have the meaning attributed to such term in the recitals hereto.

### 1.2 Other Usages

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

### 1.3 Plural and Singular

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

### 1.4 Headings

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

### 1.5 Applicable Law

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

### 1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court,

this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

### 1.7 Time of the Essence

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

### 1.8 Recitals and Schedules

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

## 2. SECURITY INTEREST

### 2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party in the following (collectively, the "**Collateral**"):

(a) all Accounts, which are now due, owing or accruing or growing due to, or which may hereafter become due, owing or accruing or growing due, to the Grantor by an Electricity Vendor;

(b) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

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

### 2.2 Attachment of Security Interest

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

## 3. COVENANTS OF THE GRANTOR

### 3.1 Covenants

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

(a) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.

(b) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.

(c) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby.

### 3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

## 4. DEALING WITH COLLATERAL

### 4.1 Grantor's Rights

Until the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

### 4.2 General Restrictions

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

(a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business; or

(b) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

### 4.3 Release by the Secured Party

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

## 5. REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties

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

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

(b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

(c) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.

(d) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the existing Collateral free and clear of any liens other than Permitted Liens.

(e) **Grantor Information** – Schedule A sets forth (a) the Grantor's jurisdiction of incorporation, (b) the location of the Grantor's registered office and business operations and records, and (c) the Grantor's exact legal name (in English and French).

(f) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

### 5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and

warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

## 6. ENFORCEMENT

### 6.1 Enforceability of Security

The security hereby constituted shall become enforceable only upon the failure of the Grantor to pay the Statutory Obligations when due, and then only to the extent of the Statutory Obligations not then paid when due. The Grantor acknowledges that it has no right in any circumstance to accelerate payment of the Statutory Obligations, to apply proceeds of Collateral on account of Statutory Obligations not yet due, or to reserve or hold proceeds of Collateral on account of Statutory Obligations not yet due.

### 6.2 Remedies

At any time that the security hereby constituted shall have become enforceable, the Secured Party may give notice of its intention to its exercise rights and remedies hereunder. At any time ten Business Days following the giving of such notice, and unless the amounts due and owing on account of the carrying Costs at the time of the Notice have been paid, the Secured Party shall have the following rights, powers and remedies:

(a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;

(b) to make payments to parties having prior charges or encumbrances on the Collateral;

(c) to preserve, protect and maintain the Collateral;

(d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;

(e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;

(f) to enjoy and exercise in respect of the Collateral all of the rights and remedies of a secured party under the PPSA;

(g) to notify the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and,

upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and

(h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

**6.3 Special Rules re Accounts**

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2,

(a) all Money or other form of payment received by the Grantor in respect of the Collateral shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and

(b) the Grantor shall not adjust, settle or compromise the amount or payment of any Collateral.

**6.4 Receiver as Agent**

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

**6.5 Expenses of Enforcement**

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

**6.6 Indulgences and Releases**

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor,

sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

### 6.7 No Liability for Failure to Exercise Remedies

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

### 6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be promptly applied as follows:

(a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;

(b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

(c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and

(d) fourth, in payment of any surplus in accordance with applicable law.

### 6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

### 6.10 Restriction on Grantor

Upon notification of the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party or the appointment of a Receiver in respect of the Collateral, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and

privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

### 6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

## 7. GENERAL

### 7.1 Waiver

Any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

### 7.2 The Secured Party as Attorney

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

### 7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

### 7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

### 7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

### 7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
**[Address]**

Attention: ■
Email: ■
Facsimile: ■

In the case of the Secured Party:

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

Attention: ■
Email: ■
Facsimile: ■

### 7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor's rights, duties or obligations hereunder without the prior written consent of the Secured Party.

### 7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

### 7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by the Parties.

### 7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

### 7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

### 7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

### 7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first written above.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Grantor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**SCHEDULE A**

**GRANTOR INFORMATION**

1. **Grantor's exact legal name: Independent Electricity System Operator**

   **■ [French]**

2. **Grantor's jurisdiction of incorporation: Ontario**

3. **Grantor's registered office address: ■**

4. **Location of Grantor's business operations and records: ■**

# SENIOR SERIES 2017-1

# SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**●**
**as Administrative Agent**

**and**

**CERTAIN CP CONDUIT PURCHASERS,**
**CERTAIN NON-CONDUIT PURCHASERS**
**CERTAIN FUNDING AGENTS**
**and CERTAIN GROUP BANKS**

**Made as of ●, 2017**

## TABLE OF CONTENTS

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 PRINCIPAL TERMS ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2

ARTICLE 3 NOTE PURCHASE FACILITY ..... 3
3.1 Purchase of Notes by the Purchasers ..... 3
3.2 Delivery ..... 4
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount ..... 4
3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination ..... 8
3.5 Increases and Reductions of the Commitments ..... 8
3.6 Interest; Fees and Other Amounts ..... 9
3.7 Repayment of Principal ..... 9
3.8 Indemnification by the Issuer ..... 10
3.9 Funding Agents ..... 10
3.10 Taxes ..... 11
3.11 Increased Costs ..... 12

ARTICLE 4 CONDITIONS PRECEDENT ..... 13
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes ..... 13
4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes ..... 15

ARTICLE 5 REPRESENTATIONS AND WARRANTIES ..... 16
5.1 Representations and Warranties of the Issuer ..... 16
5.2 Representations and Warranties of the Purchasers ..... 16
5.3 Survival ..... 16

ARTICLE 6 COVENANTS ..... 17
6.1 Covenants of the Issuer ..... 17

ARTICLE 7 AGENTS ..... 17
7.1 Administrative Agent ..... 17
7.2 Funding Agents ..... 20

ARTICLE 8 GENERAL ..... 22
8.1 Successor and Assigns ..... 22
8.2 Waiver ..... 25
8.3 Notice ..... 25

**TABLE OF CONTENTS**
(continued)

**Page**


8.4 No Waiver: Remedies ..... 25
8.5 Entire Agreement ..... 25
8.6 Governing Law and Attornment ..... 26
8.7 Acknowledgment of Trust Indenture and No Proceedings ..... 26
8.8 Expenses ..... 26
8.9 Further Assurances ..... 26
8.10 Confidentiality ..... 27
8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions ..... 28
8.12 Limitation of Liability of Issuer Trustee ..... 28
8.13 Execution in Counterparts ..... 29
8.14 Delivery of Executed Copies ..... 29

# FLOATING RATE VARIABLE FUNDING,
# SERIES 2017-1 SENIOR NOTES

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust

Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

### 3.2 Delivery

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

### 3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with

a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $**[1,000,000]** or more, or (B) if less than $[1,000,000], the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase

Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date. [**NTD: the definition of "Non-Deferrable Draw Amount"**

**includes a percentage (currently [10]%) that represents the amount that cannot be deferred by the dealers. OPG should make a proposal as to this percentage.]**

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

### 3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

### 3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $**[10,000,000]** or a whole multiple of $**[1,000,000]** in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be

subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

**3.6 Interest; Fees and Other Amounts**

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

**3.7 Accumulation and Repayment of Principal**

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount

for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

### 3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding

Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

**3.10 Taxes**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**3.11 Increased Costs**

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii)

relating to any period ending, and of which such Affected Party has had knowledge, more than one year prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture, the Manager Indemnity and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full [**(or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made)**]. [**NTD**: to be discussed]

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

**4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes**

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

### 5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

## ARTICLE 6
## COVENANTS

### 6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than [49]% of the aggregate outstanding principal amount of all Issuer Funding Obligations.

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

## ARTICLE 7
## AGENTS

### 7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other

powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent

has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

**7.2 Funding Agents**

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to

ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

## ARTICLE 8
## GENERAL

### 8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all

distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a

multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank

from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

**8.2 Waiver**

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

**8.3 Notice**

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

- ●

**8.4 No Waiver: Remedies**

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

**8.5 Entire Agreement**

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter

hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

### 8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers; and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 8.9 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

**8.10 Confidentiality**

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the

existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

**8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**8.12 Limitation of Liability of Issuer Trustee**

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for

the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

### 8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

**[FAIR HYDRO TRUST]**, as Issuer

**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

●,

By: _____
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section **[8.02]** of the Trust Indenture.

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (c) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement;

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000

definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed

Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit

Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

"**Manager Indemnity**" means an indemnity agreement from the Manager in favour of the Purchaser Groups, the Funding Agents and the Administrative Agent with respect to losses resulting from the failure of the Issuer to perform its obligations under the Program Agreements other than losses resulting from insufficient funds being transferred to the Issuer, in form and substance satisfactory to the Purchaser Groups, the Funding Agents and the Administrative Agent.

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) **[10]**% of the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD: The percentage in (a)(x) above is intended to represent the non-deferrable amount.]**

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the

reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

# SCHEDULE C

# FORM OF INCREASE NOTICE

●

# SCHEDULE D

# FORM OF DECREASE NOTICE

●

# SCHEDULE E

# PURCHASER GROUPS

●

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas |
| **Subject:** | FW: Fair Hydro -- Revised MTSA and IESO Security Agreement |
| **Date:** | Thursday, October 26, 2017 1:55:37 PM |
| **Attachments:** | #24367979v3_TorysAtWork_ - Fair Hydro - MTSA (Osler Oct 20 Draft).DOCX<br>Blackline_Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version) - 24367979v3.pdf<br>IESO Security Agreement.docx<br>#23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture.docx<br>Fair Hydro – Form of ISDA Schedule.docx |

FYI, Please see attached additional and revised documentation from OPG, including:
1 – Master Transfer and Servicing Agreement;
2 – IESO Security Agreement;
3 – Master Trust Indenture; and
4 – ISDA Schedule
We are still waiting on the Supplemental Indenture for the term debt.

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

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

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

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

TORYS LLP[torys.com]

**From:** Mansoori, Nina
**Sent:** October-24-17 5:21 PM
**To:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; STEPHEN.ASHBOURNE@blakes.com
**Cc:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** RE: Fair Hydro -- Form of ISDA Schedule

All,
We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332

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

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

# MASTER TRANSFER AND SERVICING AGREEMENT

between

**[FINANCING ENTITY]**
as Issuer

- and -

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

- and -

■
as Indenture Trustee

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION ..... 2**
1.1 Definitions ..... 2
1.2 Sections and Headings ..... 8
1.3 Extended Meanings ..... 8

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET ..... 9**
2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset ..... 9
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset ..... 10

**ARTICLE 3 ROLE OF THE SERVICER ..... 11**
3.1 Designation of Servicer ..... 11
3.2 Forecast of Electricity Consumption ..... 12
3.3 ISO Deferral ..... 12
3.4 Clean Energy Adjustments and Electricity Vendors ..... 12
3.5 Reporting ..... 14
3.6 Remittances ..... 15
3.7 Limits to Obligations ..... 15
3.8 Servicing and Maintenance Standards ..... 16
3.9 Appointments ..... 16
3.10 Term ..... 16
3.11 Resignation of Servicer ..... 17
3.12 Mergers ..... 17
3.13 The IESO Not to Resign as Servicer ..... 17
3.15 IESO Security for CEA Remittances ..... 18

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO ..... 18**
4.1 Representations and Warranties ..... 18
4.2 Survival ..... 20
4.3 Limitations on Representations and Warranties ..... 21

**ARTICLE 5 COVENANTS OF THE IESO ..... 21**
5.1 Existence ..... 21
5.2 No Transfer or Liens ..... 21
5.3 Notice of Liens ..... 21
5.4 Compliance with Law ..... 21
5.5 Covenants Related to the Investment Interest ..... 21
5.6 Non-petition Covenants ..... 22
5.7 Disclosure ..... 22
5.8 Further Assurances ..... 22
5.9 Access to Certain Records and Information Regarding Investment Interest ..... 23
5.10 Maintenance of Operations ..... 23

**ARTICLE 6 IESO INDEMNITIES ..... 23**

**TABLE OF CONTENTS**
(continued)

**Page**


6.1 Liability of the IESO; Indemnities ..... 23

**ARTICLE 7 SERVICER DEFAULT ..... 25**
7.1 Servicer Default ..... 25
7.2 Appointment of Successor Servicer ..... 26
7.3 Waiver of Past Defaults ..... 27
7.4 Notice of Servicer Default ..... 27
7.5 Cooperation with Successor Servicer ..... 28

**ARTICLE 8 MISCELLANEOUS ..... 28**
8.1 Amendment ..... 28
8.2 Withholding Rights ..... 28
8.3 No Partnership ..... 28
8.4 Notices ..... 28
8.5 Assignment ..... 29
8.6 Limitations on Rights of Third Parties ..... 29
8.7 Severability ..... 30
8.8 Separate Counterparts; Electronic Delivery ..... 30
8.9 Governing Law ..... 30
8.10 Grant of Security Interest to Indenture Trustee ..... 30
8.11 Limitation of Liability of Indenture Trustee ..... 30
8.12 Limitation of Liability of the Issuer Trustee ..... 30
8.13 Waivers ..... 31


**EXHIBIT**


Exhibit A – Form of Transfer Notice

Exhibit B – Form of Monthly Report

Exhibit C – Form of Monthly Carrying Costs Statement

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

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

(the "**Issuer**")

- and -

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

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

- and -

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

(the "**Indenture Trustee**")

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

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

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

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

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

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

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

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

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

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

"**Act**" has the meaning ascribed thereto in the recitals;

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

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

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

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be agreed to.

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

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

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

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

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

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

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

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

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

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

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

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

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

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

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

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

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

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

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

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

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

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

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

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

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

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

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.14(b);

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

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a);

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

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

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

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

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

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

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

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

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

"**Records**" has the meaning ascribed thereto in Section 7.1;

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

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Released Parties**" has the meaning ascribed thereto in Section 6.1(f);

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

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

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

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

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

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.4(e);

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

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

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

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

"**Termination Event**" has the meaning ascribed thereto in Section ■;

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

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

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

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

## 1.2 Sections and Headings[2]

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

## 1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

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

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

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

(a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(b) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(c) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(d) Upon receipt by the Transferor of the payment referred to in Section 2.1(c), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the corresponding Issuer Investment Interest.

(e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to

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

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

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

(i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;

(v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);

(vi) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vii) after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

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

### 3.2 Forecast of Electricity Consumption

The IESO shall:

(a) provide to the Board and the Financial Services Manager the forecasts of electricity consumption by Specified Consumers as contemplated by Section 8(3) of the Regulations; and

(b) provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.

### 3.3 ISO Deferral

The IESO shall:

(a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and

(b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

### 3.4 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:

(i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and

(iii) establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; **[NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]**

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within [two Business Days] of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.6;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);

(j) make reasonable efforts to contact each Electricity Vendor that:

(i) does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,

(iii) delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or

(iv) does not certify that it has established the segregated account required by Section 10(2) of the Regulations,

and attempt to resolve the applicable issue;

(k) on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■.

(l) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with this Section 3.6 without any surcharge, fee, offset, charge or other deduction.

**3.5 Reporting**

The Servicer shall:

(a) on or before the **[8th Business Day]** following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;

(c) report to the Issuer any unresolved matters referred to in Section 3.4(j);

(d) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(e) upon the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the Issuer Investment Interest or the Regulatory Asset, to the extent it is reasonably available to the Servicer and as may be

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

### 3.6 Remittances

(a) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.

(b) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Business Day.

### 3.7 Limits to Obligations

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

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

(b) The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.

(c) The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.

(d) The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.

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

**3.8 Servicing and Maintenance Standards**

(a) The Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance the Requirements of Law, including the Act and the Regulations and shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions. In furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with reasonable care and in material compliance with applicable Requirement of Laws, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar settlement activities on its own account.

(b) The Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(c) Neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

**3.9 Appointments**

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

**3.10 Term**

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

### 3.11 Resignation of Servicer

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

### 3.12 Mergers

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

### 3.13 The IESO Not to Resign as Servicer

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

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

### 3.14 IESO Regulatory Obligation to Pay Carrying Costs

(a) During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.

(b) On or before the 4th Business Day of each calendar month, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") setting out the amount of Carrying Costs in respect of the preceding calendar month ("**Monthly Carrying Costs**").

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

### 3.15 IESO Security for CEA Remittances

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

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

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

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

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

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.

(f) No Proceedings. To the IESO's knowledge, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. At the date hereof and as of each applicable Closing Date, except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Assets as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

**4.2 Survival**

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

### 4.3 Limitations on Representations and Warranties

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

## ARTICLE 5
## COVENANTS OF THE IESO

### 5.1 Existence

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

### 5.2 No Transfer or Liens

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

### 5.3 Notice of Liens

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

### 5.4 Compliance with Law

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

### 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portion of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

**5.6 Non-petition Covenants**

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

**5.7 Disclosure**

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

**5.8 Further Assurances**

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

### 5.9 Access to Certain Records and Information Regarding Investment Interest

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

### 5.10 Maintenance of Operations

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

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

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

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

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.12) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.11 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

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

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

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

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture

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

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

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

**7.2 Appointment of Successor Servicer**

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

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

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

**7.3 Waiver of Past Defaults**

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

**7.4 Notice of Servicer Default**

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

### 7.5 Cooperation with Successor Servicer

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

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Amendment

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

### 8.2 Withholding Rights

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

### 8.3 No Partnership

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

### 8.4 Notices

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

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

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

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

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

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

Attention: ■
Email: ■

(c) in the case of the Indenture Trustee:

■
**[Address]**

Attention: ■
Email: ■

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

**8.5 Assignment**

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

**8.6 Limitations on Rights of Third Parties**

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

**8.7 Severability**

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

**8.8 Separate Counterparts; Electronic Delivery**

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

**8.9 Governing Law**

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

**8.10 Grant of Security Interest to Indenture Trustee**

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

**8.11 Limitation of Liability of Indenture Trustee**

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

**8.12 Limitation of Liability of the Issuer Trustee**

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

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

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

**8.13 Waivers**

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

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

By: _____
Name:
Title:

By: _____
Name:
Title:

**[INDENTURE TRUSTEE]**
**as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

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

Attention: ■
Email: ■

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

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

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

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

See Attached

## MONTHLY REPORT

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

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

Attention: ■
Email: ■

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

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

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

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

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT C**

**FORM OF MONTHLY CARRYING COSTS STATEMENT**

See Attached

## MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

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

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

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

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

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

**MASTER TRANSFER AND SERVICING AGREEMENT**

between

**[FINANCING ENTITY]**
as Issuer

- and -

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

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

■
as Indenture Trustee

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION** **2**

1.1 Definitions 2

1.2 Sections and Headings 8

1.3 Extended Meanings 8

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET** **9**

2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset 9

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset ~~11~~10

**ARTICLE 3 ROLE OF THE SERVICER** ~~13~~11

3.1 Designation of Servicer ~~13~~11

3.2 ~~Duties of Servicer Generally~~ ~~13~~Forecast of Electricity Consumption 12

3.3 ~~Remittances~~ ~~14~~ISO Deferral 12

3.4 ~~[Funding Rebates]~~ ~~15~~Clean Energy Adjustments and Electricity Vendors 12

3.5 Reporting ~~Functions~~ ~~16~~ 14

3.6 Remittances 15

3.7 Limits to Obligations 15

3.8 Servicing and Maintenance Standards 16

~~3.7~~ ~~Binding Effect of Servicing Obligations~~ ~~16~~3.9 Appointme

3.10 Term 16

~~3.8~~ ~~Limitation on Liability~~3.11 Resignation of Servicer ~~and Others~~ 17

3.12 Mergers 17

~~3.9~~3.13 The IESO Not to Resign as Servicer 17

3.15 IESO Security for CEA Remittances 18

~~3.10~~ ~~Appointments~~ ~~18~~

~~3.11~~ ~~Effective Period and Termination~~ ~~19~~

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO** ~~19~~18

4.1 Representations and Warranties ~~19~~18

4.2 Survival ~~21~~20

4.3 Limitations on Representations and Warranties ~~22~~21

**ARTICLE 5 COVENANTS OF THE IESO** ~~22~~21

5.1 Existence ~~22~~21

5.2 No Transfer or Liens ~~22~~21

5.3 Notice of Liens ~~22~~21

5.4 Compliance with Law ~~22~~21

5.5 Covenants Related to the Investment Interest ~~23~~21

5.6 Non-petition Covenants ~~23~~22

5.7 Disclosure ~~24~~22

5.8 Further Assurances ~~24~~22

**TABLE OF CONTENTS**
(continued)

**Page**


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


**EXHIBIT**


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

**TABLE OF CONTENTS**
(continued)

**Page**

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

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

(the "**Issuer**")

- and -

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

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

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

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

(the "**Indenture Trustee**")

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

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

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

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

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

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

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

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

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

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

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

"**Act**" has the meaning ascribed thereto in the recitals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~"**Electricity Act**" means the *Electricity Act, 1998*, SO, 1998;~~

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

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

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

**(a)** **its total CEA Consumer Invoice Amounts in such Billing Period;**

**(b)** **its total Electricity Vendor CEA Collections during such Billing Period; and**

**(c)** **such other information as may be agreed to.**

**"Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

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

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

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

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

~~"**Funding Cost**" has the meaning ascribed to the term "funding cost" in the Regulations;~~

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

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

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

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

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

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

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

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

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

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

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

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

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

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

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

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

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

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

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

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

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

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

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

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

"**Monthly ~~Funding Expenses~~Carrying Costs**" has the meaning ascribed thereto in Section ~~3.4~~3.14(~~a~~b);

"**Monthly ~~Funding Rebate~~Carrying Costs Statement**" has the meaning ascribed thereto in Section ~~3.4~~3.14(~~a~~b);

~~25847049.5~~**24817972.2**

"**Monthly Report**" has the meaning ascribed thereto in Section ~~3.3~~**3.5**(~~e~~**a**);

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

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

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

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

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

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

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

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

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

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

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

"**Records**" has the meaning ascribed thereto in Section 7.1;

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

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

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

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

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

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

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

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

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

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

"**Servicer CEA ~~Collections~~Receipts**" has the meaning ascribed thereto in Section ~~3.2(a)(ii~~**3.4(e**);

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

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

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

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

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

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

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

"**Termination Event**" has the meaning ascribed thereto in Section ~~3.11~~■;

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

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

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

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

### 1.2 Sections and Headings[~~3~~2]

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

### 1.3 Extended Meanings

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

[~~3~~2] Torys to conform boilerplate provisions, as applicable, across all transaction documents.

means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

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

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

~~portion~~**Specified Portion** of the Regulatory Asset that the Transferor ~~desires~~**is offering** to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of ~~the specified portion~~**such Specified Portion** of the Regulatory Asset ~~that the Transferor proposes to Transfer to the Issuer~~, (iii) the Closing Date to effect such transfer which shall be **no earlier than** the ~~10~~**[5th]** Business Day ~~following~~**after the** delivery of the **Transfer Notice and no later than the last Business Day of the calendar month in which the** Transfer Notice **was delivered**, or such other ~~date~~**Business Day** as may be agreed ~~upon~~ by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

~~(b)~~ ~~**[The Issuer shall use commercially reasonable efforts to provide reasonable notice to the Transferor if the Issuer has reasonable cause to believe that it will not accept a Transfer Notice sent by the Transferor or that the conditions precedent in Sections 2.2(b)(i), (v), (vi), (vii), (viii) and (vii) will not be satisfied on the relevant Closing Date.][NTD: Subject to review by OPG.]**~~

**(b)** ~~(c)~~ On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the ~~portion~~**Specified Portion** of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the ~~specified portion~~**Specified Portion** of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

~~(d) In consideration and as an inducement for the Issuer to acquire the Investment Interest at the Purchase Price, the Transferor shall, concurrently with each such Transfer and in accordance with Section 3.4, agree to pay to the Issuer all Monthly Funding Expenses that are incurred by or on behalf of the Issuer in connection with each applicable Transfer in respect of each calendar month in which there are no Clean Energy Adjustments billed to Specified Consumers.~~

**(c)** ~~(e)~~ Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by **bank** wire transfer **or bank electronic funds transfer,** in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. **The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.**

**(d)** ~~(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e):~~ **Upon receipt by the Transferor of the payment referred to in Section 2.1(c),** the Transferor shall reduce the balance of the Fair Hydro Variance Account by an

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

~~(i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price and, as a consequence, the Regulatory Asset shall be adjusted accordingly; and~~

~~(ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and in accordance with section 27(1) of the Act, shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer.~~

~~(g) Any Transfer of a specified portion of the Regulatory Asset by the Transferor pursuant to this Agreement shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer, shall be treated as a true sale and not as a pledge of or secured transaction relating to the Transferor's right, title, and interest in, to, and under the specified portion of the Regulatory Asset. After giving effect to a Transfer contemplated hereby, the Transferor shall have no right, title or interest in, to or under the corresponding Investment Interest because (i) it has Transferred all of its right, title and interest in and to the corresponding specified portion of the Regulatory Asset to the Issuer, (ii) as provided in the Act, all right, title and interest to the corresponding Investment Interest shall be vested in the Issuer, (iii) as provided in the Act, such Transfer is perfected, vested, valid and binding as against the Transferor and all other Persons who may have claims of any kind against the Transferor, regardless of whether the Persons who have claims have received notice of the Transfer, and (iv) the property rights and interests acquired by the Issuer shall be free and clear of any Liens arising through the IESO.~~

**(e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(d), of a Specified Portion of the Regulatory Asset and to assign, convey or sell a corresponding Investment Interest to the Issuer.**

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

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

(i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the ~~Program Agreements to which~~**performance by** the IESO ~~is party~~**of its obligations hereunder**, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers **or delegates** executing this Agreement ~~or any of the Program Agreements to which the IESO is party~~**and authorized to give notices and instructions hereunder (which can be changed by notice hereunder)**; and

(B) ~~reports showing the results of searches conducted against the IESO under applicable personal property security registers in the Province of Ontario together with executed copies of all discharges or releases of prior security interests relating to the Regulatory Asset subject to the Transfer; provided that the IESO may establish that any particular registration does not affect the Regulatory Asset by delivering a letter or acknowledgment signed by the applicable secured party.~~the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them**. [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

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

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor ~~is not insolvent and will not have been made insolvent by such Transfer and the Transferor~~ is not aware of any pending ~~insolvency~~**Insolvency Event** with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred ~~and not been waived~~**be continuing**, and (C) no Servicer Default shall have occurred and ~~not been waived~~**be continuing**;

(iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the ~~specified portion~~**Specified Portion** of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;

(v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);

~~(vi) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel];~~

**(vi)** ~~(vii)~~ as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

**(vii)** ~~(viii)~~ after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

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

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

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

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

~~(i)~~ ~~issue settlement statements to Electricity Vendors that include amounts in respect of the Clean Energy Adjustment as prescribed by the Act and the Regulations;~~

~~(ii)~~ ~~receive from Electricity Vendors amounts in respect of Electricity Vendor CEA Collections including payments made directly to the IESO as an Electricity Vendor (such amounts received being "**Servicer CEA Collections**");~~

~~(iii)~~ ~~hold and remit Servicer CEA Collections in accordance with Section 3.3;~~

~~(iv)~~ ~~receive information from Electricity Vendors in respect of CEA Consumer Invoice Amounts and Electricity Vendor CEA Collections and such other information as the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required;~~

~~(v)~~ ~~determine and record the IESO Deferral for each month and make any necessary corrections thereto in accordance with the Act and the Regulations;~~

~~(vi)~~ ~~forecast electricity demand by Specified Consumers for Reference Periods;~~

**The IESO shall:**

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

~~(viii)~~ ~~respond to inquiries by Electricity Vendors, the Board or any other Governmental Authority with respect to the Clean Energy Adjustment;~~

~~(ix) investigate and handle delinquencies by Electricity Vendors regarding Servicer CEA Collections (and furnish reports with respect to such delinquencies to the Issuer);~~

~~(x) process and deposit Servicer CEA Collections and make periodic remittances to the Issuer in accordance with Section 3.3;~~

~~(xi) furnish periodic and current reports to the Issuer, the Board, the Indenture Trustee and the Rating Agencies, as may reasonably be required by the Issuer;~~

~~(xii) take all necessary action in connection with Funding Rebates as set forth herein and in the Regulations; and~~

~~(xiii) perform such other duties as may be reasonably required from time to time to be performed by it.~~

(b) ~~Without limiting the generality of Section 3.2(a), in furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with, the duties and responsibilities relating to data acquisition, consumption and settlement statement calculation, settlement, collections, posting, payment processing and remittance with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar assets for its own account and, if applicable, for others.~~**provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.**

~~(c) Notwithstanding anything to the contrary in this Agreement, the duties of the Servicer set forth in this Agreement shall be qualified and limited in their entirety by the Act, the Regulations, all applicable laws and the rules and regulations promulgated thereunder as in effect at the time such duties are to be performed.~~

**3.3 ~~Remittances~~ISO Deferral**

~~(a)~~ The **IESO shall:**

**(a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and**

**(b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.**

~~25847649.5~~

**3.4 Clean Energy Adjustments and Electricity Vendors**

**The Servicer shall:**

**(a)** **prior to receiving** Servicer ~~shall~~**CEA Receipts,** establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation ~~clearly~~ indicating that the funds deposited therein are held in trust for the benefit of the **Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or** owners of **an** Investment ~~Interests~~**Interest**. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account~~.~~**;**

**(b)** **prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:**

**(i)** **establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;**

**(ii)** **settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and**

**(iii)** **establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; [NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]**

**(c)** **request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;**

**(d)** **as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;**

**(e)** **as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the "Servicer CEA Receipts");**

**(f)** ~~(b) The Servicer shall~~ deposit ~~all~~**the** Servicer CEA ~~Collections~~**Receipts** into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within **[**two ~~Servicer~~ Business Days**]** of receipt by the Servicer and **the Issuer Share of** such Servicer CEA ~~Collections~~**Receipts** shall remain in the IESO Segregated Account until remitted in accordance with Section ~~3.3(d)~~ **3.6;**

**(g)** respond to inquiries by Electricity Vendors **with respect to the Clean Energy Adjustment and amounts payable in respect thereof;**

**(h)** **request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;**

**(i)** **review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);**

**(j)** **make reasonable efforts to contact each Electricity Vendor that:**

**(i)** **does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;**

**(ii)** **does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,**

**(iii)** **delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or**

**(iv)** **does not certify that it has established the segregated account required by Section 10(2) of the Regulations,**

**and attempt to resolve the applicable issue;**

**(k)** **on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■.**

**(l)** ~~(c) The IESO agrees and acknowledges that it holds all~~**hold the Issuer Share of** Servicer CEA ~~Collections~~**Receipts** and **the Issuer Share of** any other proceeds in

respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer, any other owner of Investment Interests, the Indenture Trustee and the Specified Creditors and that all such amounts will be remitted by the Servicer and remit such amounts in accordance with this Section 3.3 3.6 without any surcharge, fee, offset, charge or other deduction.

## 3.5 Reporting

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

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

(a) (e) On on or before the **[2nd] Servicer 8th Business Day]** following the end of each Billing Period, the Servicer shall prepare and deliver to the Issuer, the Indenture Trustee and the Rating Agencies a written report substantially in the form of Exhibit B (a "**Monthly Report**"). ;

## 3.4 [Funding Rebates]

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

(b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;

(c) (a) On or before the **[4th]** Servicer Business Day following the end of each calendar month in which no Clean Energy Adjustment is billed to Specified Consumers, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Funding Rebate Statement**") setting out the aggregate amount of all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Financing Entity Expenses, and (iv) Tax Liabilities (net of Tax Refunds), that were incurred by or on behalf of the Issuer during the previous calendar month ("**Monthly Funding Expenses**"). report to the Issuer any unresolved matters referred to in Section 3.4(j);

(b) On or before the **[10th]** Servicer Business Day following receipt by the IESO of the Monthly Funding Rebate Statement, the IESO shall, as required by the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer in

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

~~**3.5 Reporting Functions**~~

**(d)** ~~(a) Notification of Laws and Regulations. The Servicer shall~~ promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance **of which it becomes aware** that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement~~.~~**; and**

**(e)** ~~(b) Other Information. Upon~~**upon** the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, ~~the Servicer shall~~ provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the **Issuer** Investment Interest or the Regulatory Asset**,** to the extent it is reasonably available to the Servicer~~,~~ **and** as may be reasonably necessary and permitted by law**,** to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder. ~~In addition, the Servicer shall provide the Issuer and the Indenture Trustee, within a reasonable time after written request therefor, any information available to the Servicer or reasonably obtainable by it that is necessary to calculate the Clean Energy Adjustment.~~

**3.6 Remittances**

**(a)** Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA **Receipts** received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.

**(b)** Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA **Receipts** on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account **on each Business Day.**

**3.7 Limits to Obligations**

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

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

**(b)** **The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.**

**(c)** **The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of** Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) **the collection from Specified Consumers of amounts due** in respect of such invoices and **the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.**

**(d)** **The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.**

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

**3.8** ~~3.6~~ **Servicing and Maintenance Standards**

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

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

~~**3.7 Binding Effect of Servicing Obligations**~~

**(b)** **The** Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

**(c)** **Neither** the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment**.**

**3.9 Appointments**

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

**3.10 Term**

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

~~25847049.5~~**24817972.2**

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

**3.11 Resignation of Servicer**

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

**3.12 Mergers**

~~The obligations to continue to provide services and to receive and account for Servicer CEA Collections and related amounts will be binding upon the Servicer and any Permitted Successor so long as the Servicer CEA Collections have not been fully received and posted.~~ Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section ~~3.7~~**3.12** and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section ~~3.7~~**3.12**, then, upon satisfaction of all of the other conditions of this Section ~~3.7~~**3.12**, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

~~25847049.5~~[illegible]

~~**3.8 Limitation on Liability of Servicer and Others**~~

~~(a) Except as otherwise provided under this Agreement, including Section 6.1, neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that would otherwise be imposed by reason of negligence, recklessness or willful misconduct in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person, respecting any matters arising under this Agreement.~~

~~(b) Except as provided in this Agreement, the Servicer shall not be under any obligation to appear in, prosecute or defend any legal action relating to the Issuer Investment Interest that is not directly related to one of the Servicer's enumerated duties in this Agreement or related to its obligation to pay indemnification, and that in its reasonable opinion may cause it to incur any expense or liability; provided, however, that the Servicer will, at the direction of the Issuer, in respect of any Proceeding, undertake any action that is not specifically identified in this Agreement as a duty of the Servicer but that the Issuer reasonably determines is necessary or desirable in order to protect the rights and duties of the Issuer or the Indenture Trustee under this Agreement and the interests of Specified Creditors under the Indenture.~~

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

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

~~**3.10 Appointments**~~

**3.14 IESO Regulatory Obligation to Pay Carrying Costs**

(a) ~~Subject to Section 3.10(b), the~~ Servicer ~~may at any time appoint any Person to perform all or any portion of its obligations as Servicer hereunder; provided, however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided, further, that the Servicer shall remain obligated and be liable under this Agreement for the servicing and administering of the Issuer Investment Interest in accordance with the provisions hereof without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Investment Interest. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and none of the Issuer, the Indenture Trustee, Specified Creditors or any other Person shall have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.9.~~ **During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.**

(b) ~~The following matters shall be performed by the Electricity Vendors in accordance with the Act and shall not be considered an "appointment" for purposes of Section 3.10(a): (i) invoicing~~ Specified Consumers ~~in respect of the~~ Clean Energy Adjustment and ancillary matters related thereto; ~~(ii) collection from Specified Consumers of payments in respect of such invoices and remittance of such payments to the Servicer; and (iii) reporting to the Servicer the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and such other information the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required. The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations or in respect of the matters set out in this Section 3.10(b).~~ **On or before the 4th Business Day of each calendar month**, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of **Exhibit C (a "Monthly Carrying Costs Statement") setting out the amount of Carrying Costs in respect of the preceding calendar month ("Monthly Carrying Costs").**

~~**3.11 Effective Period and Termination**~~

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

### 3.15 IESO Security for CEA Remittances

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

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

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

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite **corporate** power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it~~, and to execute, deliver and carry out the terms of this Agreement, including, for greater certainty, acting as Servicer in accordance with this Agreement~~.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset~~,~~ **or** the servicing of related Investment Interests~~, the Issuer or the repayment when due of the Funding Obligations~~.

(c) Power and Authority. The IESO has the requisite **corporate** power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer ~~specified portions~~**Specified Portions** of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary **corporate** action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary **corporate** action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.

(f) No Proceedings. ~~There are no Proceedings or, to~~**To** the IESO's knowledge, ~~investigations~~**there are no Proceedings** pending or ~~Proceedings~~ threatened~~, before any Governmental Authority having jurisdiction over~~ **against** the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information.~~(i)~~ At the date hereof and as of each applicable Closing Date, **except in respect of information provided by a third party,** all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.

~~(ii) Each report and certificate delivered in connection with any filing made or information provided to the Board by the IESO in connection with the Act, including on behalf of the Issuer with respect to Clean Energy Adjustments, will constitute a representation and warranty by the IESO that each such report or certificate, as the case may be, is true and correct in all material respects; provided, however, that, to the extent any such report or certificate is based in part upon or contains assumptions, forecasts or other predictions of future events, the representation and warranty of the IESO with respect thereto will be limited to the representation and warranty that such assumptions, forecasts or other predictions of future events are reasonable based upon historical performance (and facts known to the IESO on the date such report or certificate is delivered).~~

(i) The Transfer. ~~On~~**After the completion of the Transfer on** the applicable Closing Date, the ~~specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice shall be validly Transferred to the Issuer and the~~ IESO will have no right, title or interest in the ~~related~~ Investment Interest **related to the Specified Portion of the Regulatory Assets** as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except ~~pursuant to any Co-Owner Agreement, no portion of~~**for Permitted Transfers,** the ~~Regulatory Asset~~**IESO** has ~~been~~**not** sold, transferred, assigned~~,~~ **or otherwise conveyed any interest in the Regulatory Asset to any Person.**

**(k) Liens. IESO has not** pledged or otherwise ~~conveyed by the IESO~~**granted a Lien** to any Person ~~other than the Issuer or the Indenture Trustee, and,~~**in the Regulatory Asset and** to the IESO's knowledge (after due inquiry), ~~no security agreement,~~**there is no registered** financing statement ~~or equivalent security or lien instrument~~ listing the IESO as debtor covering ~~all or a portion of the Regulatory Asset (or the corresponding Investment Interest upon the Transfer thereof) is on file or of record in any jurisdiction, except such as may have been filed or recorded in favour of the Issuer or the Indenture Trustee in connection with the Program Agreements.~~(k) ~~Title. The IESO is the sole owner of the specified portion of the Regulatory Asset that is to be Transferred to the Issuer on~~

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

(l) Tax Liens. ~~After due inquiry, the~~**The** IESO **(i)** is not aware**, after due inquiry,** of any judgment or tax lien filing against the IESO**, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada)**.

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

~~(i) is solvent and expects to remain solvent;~~

**(i)** ~~(ii)~~ reasonably believes that it will be able to pay its debts as they come due; and

**(ii)** ~~(iii)~~ is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

### 4.2 Survival

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

### 4.3 Limitations on Representations and Warranties

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

## ARTICLE 5
## COVENANTS OF THE IESO

### 5.1 Existence

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

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

### 5.2 No Transfer or Liens

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

### 5.3 Notice of Liens

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

### 5.4 Compliance with Law

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

## 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations ~~other than Funding Rebates~~.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

~~(d) The IESO agrees that upon completion of a Transfer, the IESO shall reduce the balance in the Fair Hydro Variance Account by the Purchase Price and will adjust the Regulatory Asset accordingly.~~

**(d)** ~~(e)~~ (i) ~~in~~**In** all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the ~~specified portion~~**Specified Portion** of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, **and** (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement~~, and (iv) the IESO shall not sell any portion of the Regulatory Asset pursuant to the Act to any other Person unless a Co-Owner Agreement has been entered into and the Rating Agency Condition has been satisfied with respect thereto~~.

## 5.6 Non-petition Covenants

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

## 5.7 Disclosure

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

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

### 5.8 Further Assurances

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

### ~~5.9 Co-Owner Agreements~~

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

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

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

### 5.10 ~~5.11~~ Maintenance of Operations

Subject to Section ~~3.7~~**3.12**, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario ~~in order to provide service~~ so long as it is acting as the Servicer under this Agreement.

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

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

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

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section ~~3.7~~**3.12**) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to **Section 3.11 of** this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO. ~~Other than provided in the preceding sentence, the~~

**(e)** **The** IESO shall not **be required to** indemnify any party under this Section 6.1 for any **losses resulting from** changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

~~25847049.5~~

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

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

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

(a) any failure by the Servicer to remit to the Collection Account ~~on behalf of the Issuer~~ any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer ~~(with a copy to the Indenture Trustee)~~ or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer ~~(with a copy to the Indenture Trustee)~~ or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the

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

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; **or**

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs; ~~or~~

~~(f) the termination or withdrawal of the "Servicing Guarantee" under the Provincial Protection and Assurances Agreement. **[NTD: Subject to finalization of the Provincial Protection and Assurances Agreement.]**~~

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

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

**7.2 Appointment of Successor Servicer**

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

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

**7.3 Waiver of Past Defaults**

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

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

**7.4 Notice of Servicer Default**

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

**7.5 Cooperation with Successor Servicer**

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

## ARTICLE 8
## MISCELLANEOUS

**8.1 Amendment**

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

**8.2 Withholding Rights**

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

**8.3 No Partnership**

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

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

**8.4 ~~8.2~~ Notices**

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

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

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

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

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

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

Attention: ■
Email: ■

(c) in the case of the Indenture Trustee:

■
**[Address]**

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

## 8.5 ~~8.3~~ Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

## 8.6 ~~8.4~~ Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO, the Issuer and, to the extent provided herein or in the other Program Agreements, the Indenture Trustee (for its own benefit and for the benefit of the Specified Creditors) and the other Persons expressly referred to herein, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

## 8.7 ~~8.5~~ Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## 8.8 ~~8.6~~ Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

## 8.9 ~~8.7~~ Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## 8.10 ~~8.8 Assignment~~Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to ~~any mortgage, pledge, assignment and~~the grant of a ~~security interest~~Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors ~~of~~against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors. ~~In no event shall the Indenture Trustee have any liability for the representations, warranties, covenants, agreements or other obligations of the Issuer hereunder or in any of the certificates delivered pursuant hereto, as to all of which any recourse shall be had solely to the assets of the Issuer subject to the availability of funds therefor under Section [8.02] of the Indenture.~~

## 8.11 ~~8.9~~ Limitation of Liability of Indenture Trustee

It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Indenture Trustee, not individually or personally but solely as Indenture Trustee on behalf of the Specified Creditors, in the exercise of the powers and authority conferred and vested in it. The Indenture Trustee in acting hereunder is entitled to all rights, benefits, protections, immunities and indemnities accorded to it under the Indenture.

## 8.12 ~~8.10~~ Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's

activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.10~~**8.12**, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

**8.13** ~~**8.11**~~ **Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof; provided, however, that no such waiver delivered by the Issuer shall be effective unless the Indenture Trustee has given its prior written consent thereto. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor

in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

~~**8.12 Indenture Trustee Actions**~~

~~In acting hereunder, the Indenture Trustee shall have the rights, protections and immunities granted to it under the Indenture.~~

~~**8.13 Issuer Trustee**~~

~~In acting hereunder, the Issuer Trustee shall have the rights, protections and immunities granted to it under the Declaration of Trust.~~

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By:
Name:
Title:

By:
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor and Servicer**

By:
Name:
Title:

By:
Name:
Title:

~~**ACKNOWLEDGED AND ACCEPTED:**~~

**[INDENTURE TRUSTEE]**
**as Indenture Trustee**

By:
Name:
Title:

By:
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its ~~desire~~**offer** to transfer to the Issuer on the Closing Date set out below, on a fully serviced basis, the ~~specified portion~~**Specified Portion** of the Regulatory Asset set out below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the ~~specified portion~~**Specified Portion** of the Regulatory Asset set out below, on a fully serviced basis, ~~**[and (ii) the Transferor's agreement to pay to the Issuer all (a) Funding Costs, (b) Finance Reserve Deposits, (c) Financing Entity Expenses, and (d) Tax Liabilities (net of Tax Refunds) that are incurred by the Issuer in connection with such Transfer,]**~~[4] the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date, (i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price**,** and the Regulatory Asset shall be adjusted accordingly; and (ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any

[4] ~~Funding Rebate language to be included in Transfer Notice only when Clean Energy Adjustment is not being charged.~~

adverse claim, and shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. **The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].**

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

See Attached

## MONTHLY REPORT

**[NTD: Subject to continuing review by the Dealers and ~~Counsel to confirm form of Monthly IESO Report~~their counsel.]**

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted~~ by **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.3~~■ of the Master Transfer and Servicing Agreement the Servicer hereby certifies in respect of the Billing Period corresponding to the calendar month of ■, ■, as follows:

| | **Item** | **Amount** |
|---|---|---|
| (A) | Servicer CEA ~~Collections~~**Receipts**: | $■ |
| (B) | Balance of Collection Account: | $■ |

**[NTD: Any additional information considered necessary for OPG/IESO to be included.]**

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT C**

**FORM OF MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT**

See Attached

**MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT**

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). Capitalized terms used but not defined in this Monthly ~~Funding Rebate~~**Carrying Costs** Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.4(a)~~**3.14** of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly ~~Funding Expenses incurred by the Issuer~~**Carrying Costs** in respect of the calendar month of ■, ■ are as follows:

| ~~Monthly Funding Expense~~ | **Amount** |
|---|---|
| Funding ~~Costs~~**costs**: | $■ |
| ~~Finance Reserve Deposits~~**Derivative payments to be made**: | $■ |
| **Amounts deposited into accounts other than capital accounts:** | **$■** |
| Financing ~~Entity Expenses~~**entity expenses**: | $■ |
| Tax ~~Liabilities (net of Tax Refunds)~~**liabilities**: | $■ |
| ~~Total Monthly Funding Expense~~**Subtotal**: | $■ |
| **LESS:** | |
| **Amounts withdrawn from accounts other than capital accounts:** | |
| **Derivative payments to be received:** | |
| **Tax refunds:** | **$■** |
| **Subtotal:** | **$■** |
| **Monthly Carrying Costs** | **$■** |

~~**[NTD: Any additional information considered necessary for OPG/IESO to be included.]**~~

In accordance with Section ~~3.4~~**3.14**(b) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the ~~Total~~ Monthly ~~Funding Expense~~**Carrying Costs** set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

**[NTD: Wire transfer instructions to be provided by OPG.]**

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on October-25-17 12:04:10 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\rramchan\Desktop\Fair Hydro - Master Transfer  Servicing Agreement (Alternative Funding Rebate Regulation Version).docx |
| Description | Fair Hydro - Master Transfer  Servicing Agreement (Alternative Funding Rebate Regulation Version) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24367979/3 |
| Description | #24367979v3<TorysAtWork> - Fair Hydro - MTSA (Osler Oct 20 Draft) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 437 |
| Deletions | 421 |
| Moved from | 29 |
| Moved to | 29 |
| Style change | 0 |
| Format changed | 0 |

| | |
|---|---|
| Total changes | 916 |

**MASTER TRANSFER AND SERVICING AGREEMENT**

between

**[FINANCING ENTITY]**
as Issuer

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
as Transferor and Servicer

~~Acknowledged~~ and ~~Accepted by~~

■
as Indenture Trustee

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION** **2**

1.1 Definitions 2

1.2 Sections and Headings 8

1.3 Extended Meanings 8

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET** **9**

2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset 9

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset ~~11~~10

**ARTICLE 3 ROLE OF THE SERVICER** ~~13~~11

3.1 Designation of Servicer ~~13~~11

3.2 ~~Duties of Servicer Generally~~ ~~13~~Forecast of Electricity Consumption 12

3.3 ~~Remittances~~ ~~14~~ISO Deferral 12

3.4 ~~[Funding Rebates]~~ ~~15~~Clean Energy Adjustments and Electricity Vendors 12

3.5 Reporting ~~Functions~~ ~~16~~ 14

3.6 Remittances 15

3.7 Limits to Obligations 15

3.8 Servicing and Maintenance Standards 16

~~3.7~~ ~~Binding Effect of Servicing Obligations~~ ~~16~~3.9 Appointme

3.10 Term 16

~~3.8~~ ~~Limitation on Liability~~3.11 Resignation of Servicer ~~and Others~~ 17

3.12 Mergers 17

~~3.9~~3.13 The IESO Not to Resign as Servicer 17

3.15 IESO Security for CEA Remittances 18

~~3.10~~ ~~Appointments~~ ~~18~~

~~3.11~~ ~~Effective Period and Termination~~ ~~19~~

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO** ~~19~~18

4.1 Representations and Warranties ~~19~~18

4.2 Survival ~~21~~20

4.3 Limitations on Representations and Warranties ~~22~~21

**ARTICLE 5 COVENANTS OF THE IESO** ~~22~~21

5.1 Existence ~~22~~21

5.2 No Transfer or Liens ~~22~~21

5.3 Notice of Liens ~~22~~21

5.4 Compliance with Law ~~22~~21

5.5 Covenants Related to the Investment Interest ~~23~~21

5.6 Non-petition Covenants ~~23~~22

5.7 Disclosure ~~24~~22

5.8 Further Assurances ~~24~~22

**TABLE OF CONTENTS**
(continued)

**Page**


5.9 ~~Co-Owner Agreements~~ ~~24~~
~~5.10~~ Access to Certain Records and Information Regarding Investment Interest ~~24~~23
~~5.11~~5.10 Maintenance of Operations ~~24~~23
**ARTICLE 6 IESO INDEMNITIES** ~~25~~23
6.1 Liability of the IESO; Indemnities ~~25~~23
**ARTICLE 7 SERVICER DEFAULT** ~~27~~25
7.1 Servicer Default ~~27~~25
7.2 Appointment of Successor Servicer ~~28~~26
7.3 Waiver of Past Defaults ~~29~~27
7.4 Notice of Servicer Default ~~29~~27
7.5 Cooperation with Successor Servicer ~~29~~28
**ARTICLE 8 MISCELLANEOUS** ~~30~~28
8.1 Amendment ~~30~~28
8.2 ~~Notices~~ ~~30~~Withholding Rights 28
8.3 ~~Assignment~~ ~~31~~No Partnership 28
8.4 Notices 28
8.5 Assignment 29
8.6 Limitations on Rights of Third Parties ~~31~~29
~~8.5~~8.7 Severability ~~31~~30
~~8.6~~8.8 Separate Counterparts; Electronic Delivery ~~31~~30
~~8.7~~8.9 Governing Law ~~32~~30
~~8.8~~ ~~Assignment~~8.10 Grant of Security Interest to Indenture Trustee ~~32~~30
~~8.9~~ ~~Limitation of Liability of Indenture Trustee~~ ~~32~~
~~8.10~~ ~~Limitation of Liability of the Issuer Trustee~~ ~~32~~
8.11 ~~Waivers~~ ~~33~~Limitation of Liability of Indenture Trustee 30
8.12 ~~Indenture Trustee Actions~~ ~~33~~
~~8.13~~ Limitation of Liability of the Issuer Trustee ~~34~~30
8.13 Waivers 31


**EXHIBIT**


Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly ~~Funding Rebate~~Carrying Costs Statement

**TABLE OF CONTENTS**
(continued)

**Page**

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

**[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

- ~~acknowledged~~ and ~~accepted by~~ -

**[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

**AND WHEREAS**, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer a ~~specified portion~~**Specified Portion** of the Regulatory Asset to the Issuer on a fully-serviced

basis, and pursuant to Section 26(3) of the Act, such a Transfer ~~shall result~~results in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the ~~specified portion~~Specified Portion of the Regulatory Asset;

**AND WHEREAS** the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

**AND WHEREAS** the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

**AND WHEREAS** in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer desires to be so engaged;

**AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors (as defined in the Indenture) and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement.**

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

~~"**Administrative Agent**" means OPG, in its capacity as administrative agent of the Issuer;~~

~~"**Administrative Services Agreement**" means the administrative services agreement dated ■, 2017 between the Administrative Agent and the Issuer concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Issuer;~~

~~"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the~~

~~ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing;~~

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are~~, or the office of the Indenture Trustee is,~~ authorized or obligated by law, regulation or executive order to be closed;

**"Carrying Costs" has the meaning ascribed to the term "carrying costs" in the Regulations;**

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the ~~Issuer~~**parties hereto** and any other owner or owners of an Investment Interest as contemplated by ~~subsection~~**Section** 29(5) of the Act **in form and substance satisfactory to the parties hereto, acting reasonably**;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" has the meaning ascribed thereto in Section **[8.02(a)]**[1] of the Indenture;

~~"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at ■; Telephone: ■; Email: ■, or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice;~~

[1] All cross-references to the Indenture to be conformed to the final version of the Indenture.

"**Daily Remittance Event**" means ~~■ [NTD: Definition to be tied to the loss of investment grade ratings of the IESO]~~the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

~~"**Electricity Act**" means the *Electricity Act, 1998*, SO, 1998;~~

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report" means a report as contemplated by Section 17(s) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:**

**(a)** **its total CEA Consumer Invoice Amounts in such Billing Period;**

**(b)** **its total Electricity Vendor CEA Collections during such Billing Period; and**

**(c)** **such other information as may be agreed to.**

**"Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to ~~subsection~~**Section** 24(1) of the Act;

~~"**Finance Reserve Deposit**" has the meaning ascribed to the term "finance reserve deposit" in the Regulations;~~

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

~~"**Financing Entity Expenses**" has the meaning ascribed to the term "financing entity expense" in the Regulations;~~

~~"**Funding Cost**" has the meaning ascribed to the term "funding cost" in the Regulations;~~

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

~~["**Funding Rebate**" has the meaning ascribed thereto in Section 3.4(b);]~~**[NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]**

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act*, *1998*, SO, 1998;

**[NTD: The Issuer may at some point have to publicly file this Agreement, and a copy of it will be circulated to the rating agencies. Therefore, it seems prudent not to include IESO bank account details in the Agreement.]**

"**IESO Deferral**"~~, at any time, means the amount determined by the IESO under subsection 23(1) of the Act and sections 15 and 16 of the Regulations and recorded by the IESO under subsection 24(1) of the Act in the Fair Hydro Variance Account at such time~~ **has the meaning ascribed to the term "IESO deferral" in the Act**;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" **has the meaning ascribed thereto in Section** means the account established under Section ~~3.3~~**3.4**(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization,

moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly ~~Funding Expenses~~Carrying Costs**" has the meaning ascribed thereto in Section ~~3.4~~3.14(~~a~~b);

"**Monthly ~~Funding Rebate~~Carrying Costs Statement**" has the meaning ascribed thereto in Section ~~3.4~~3.14(~~a~~b);

~~25847049.5~~**24817972.2**

"**Monthly Report**" has the meaning ascribed thereto in Section ~~3.3~~**3.5**(~~e~~**a**);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture, and delivered to the Indenture Trustee;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, ~~who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel,~~ which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

~~"**Outstanding Amount**" means the aggregate principal amount of all Funding Obligations outstanding at the date of determination;~~

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

**"Permitted Transfer" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.**

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" ~~means the Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Administrative Services Agreement, this Agreement, each Transfer Notice, any Co-Owner Agreements, the Provincial Protection and Assurances Agreement and any hedging agreements, credit enhancement agreements, loan agreements and underwriting or agency agreements in effect at such time and all other documents and certificates delivered in connection therewith;~~**has the meaning ascribed thereto in the Indenture;**

~~"**Provincial Protection and Assurances Agreement**" means the Provincial Protection and Assurances Agreement dated as of ■, 2017 between **[Her Majesty the Queen in Right of Ontario, as represented by the Minister, the Indenture Trustee and the Issuer]**[NTD: **Subject to finalization of agreement**];~~

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(a);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

~~"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;~~

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Released Parties**" has the meaning ascribed thereto in Section 6.1(~~e~~**f**);

"**Remittance Date**" means, in respect of each Billing Period, the **[3rd]**[2] ~~Servicer~~ Business Day following the last day of each Billing Period;

**"Required Servicer Rating" means ■; [NTD: Definition to tie to loss of investment grade credit rating.]**

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; (c) a Successor Servicer, any authorized director or officer of the Successor Servicer; and (d) the Indenture Trustee, any officer ~~within the Corporate Trust Office~~ of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject);

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

~~"**Servicer Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed, on which the Servicer maintains normal office hours and conducts business;~~

"**Servicer CEA ~~Collections~~Receipts**" has the meaning ascribed thereto in Section ~~3.2(a)(ii~~**3.4(e**);

[2] ~~Based on the monthly payment cycle charts prepared by OPG.~~

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

~~"**Tax Liability**" has the meaning ascribed to the term "tax liability" in the Regulations;~~

~~"**Tax Refund**" has the meaning ascribed to the term "tax refund" in the Regulations;~~

"**Termination Event**" has the meaning ascribed thereto in Section ~~3.11~~■;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(a) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

### 1.2 Sections and Headings[~~3~~2]

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration

[~~3~~2] Torys to conform boilerplate provisions, as applicable, across all transaction documents.

means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

### 2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset

(a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of ~~each~~**any** calendar month, ~~provide~~**offer** to **Transfer to** the Issuer a **Specified Portion of the Regulatory Asset by providing to the Issuer a** Transfer Notice executed by the Transferor and setting out (i) the ~~specified~~

~~portion~~**Specified Portion** of the Regulatory Asset that the Transferor ~~desires~~**is offering** to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of ~~the specified portion~~**such Specified Portion** of the Regulatory Asset ~~that the Transferor proposes to Transfer to the Issuer~~, (iii) the Closing Date to effect such transfer which shall be **no earlier than** the ~~10~~**[5th]** Business Day ~~following~~**after the** delivery of the **Transfer Notice and no later than the last Business Day of the calendar month in which the** Transfer Notice **was delivered**, or such other ~~date~~**Business Day** as may be agreed ~~upon~~ by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

~~(b)~~ ~~**[The Issuer shall use commercially reasonable efforts to provide reasonable notice to the Transferor if the Issuer has reasonable cause to believe that it will not accept a Transfer Notice sent by the Transferor or that the conditions precedent in Sections 2.2(b)(i), (v), (vi), (vii), (viii) and (vii) will not be satisfied on the relevant Closing Date.][NTD: Subject to review by OPG.]**~~

**(b)** ~~(c)~~ On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the ~~portion~~**Specified Portion** of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the ~~specified portion~~**Specified Portion** of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

~~(d) In consideration and as an inducement for the Issuer to acquire the Investment Interest at the Purchase Price, the Transferor shall, concurrently with each such Transfer and in accordance with Section 3.4, agree to pay to the Issuer all Monthly Funding Expenses that are incurred by or on behalf of the Issuer in connection with each applicable Transfer in respect of each calendar month in which there are no Clean Energy Adjustments billed to Specified Consumers.~~

**(c)** ~~(e)~~ Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by **bank** wire transfer **or bank electronic funds transfer,** in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. **The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.**

**(d)** ~~(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e):~~ **Upon receipt by the Transferor of the payment referred to in Section 2.1(c),** the Transferor shall reduce the balance of the Fair Hydro Variance Account by an

amount equal to the Purchase Price **received and shall retain no further right, title or interest in the corresponding Issuer Investment Interest.**

~~(i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price and, as a consequence, the Regulatory Asset shall be adjusted accordingly; and~~

~~(ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and in accordance with section 27(1) of the Act, shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer.~~

~~(g) Any Transfer of a specified portion of the Regulatory Asset by the Transferor pursuant to this Agreement shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer, shall be treated as a true sale and not as a pledge of or secured transaction relating to the Transferor's right, title, and interest in, to, and under the specified portion of the Regulatory Asset. After giving effect to a Transfer contemplated hereby, the Transferor shall have no right, title or interest in, to or under the corresponding Investment Interest because (i) it has Transferred all of its right, title and interest in and to the corresponding specified portion of the Regulatory Asset to the Issuer, (ii) as provided in the Act, all right, title and interest to the corresponding Investment Interest shall be vested in the Issuer, (iii) as provided in the Act, such Transfer is perfected, vested, valid and binding as against the Transferor and all other Persons who may have claims of any kind against the Transferor, regardless of whether the Persons who have claims have received notice of the Transfer, and (iv) the property rights and interests acquired by the Issuer shall be free and clear of any Liens arising through the IESO.~~

**(e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(d), of a Specified Portion of the Regulatory Asset and to assign, convey or sell a corresponding Investment Interest to the Issuer.**

**2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset**

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a ~~specified portion~~**Specified Portion** of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer and the Indenture Trustee, of the following ~~condition~~**conditions**:

(i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the ~~Program Agreements to which~~**performance by** the IESO ~~is party~~**of its obligations hereunder**, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers **or delegates** executing this Agreement ~~or any of the Program Agreements to which the IESO is party~~**and authorized to give notices and instructions hereunder (which can be changed by notice hereunder)**; and

(B) ~~reports showing the results of searches conducted against the IESO under applicable personal property security registers in the Province of Ontario together with executed copies of all discharges or releases of prior security interests relating to the Regulatory Asset subject to the Transfer; provided that the IESO may establish that any particular registration does not affect the Regulatory Asset by delivering a letter or acknowledgment signed by the applicable secured party.~~the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them**. [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a ~~specified portion~~**Specified Portion** of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor ~~is not insolvent and will not have been made insolvent by such Transfer and the Transferor~~ is not aware of any pending ~~insolvency~~**Insolvency Event** with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred ~~and not been waived~~**be continuing**, and (C) no Servicer Default shall have occurred and ~~not been waived~~**be continuing**;

(iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the ~~specified portion~~**Specified Portion** of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;

(v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);

~~(vi) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel];~~

**(vi)** ~~(vii)~~ as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

**(vii)** ~~(viii)~~ after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

Each Transfer of a specified portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be ~~fully~~ serviced by the Servicer **in**

accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled to receive any further compensation from the Issuer ~~or the Indenture Trustee~~ for its services in connection therewith. The Servicer ~~acknowledges the responsibility of the Servicer for servicing the related Issuer Investment Interest corresponding to the specified portion of the Regulatory Asset Transferred by the Transferor under this Agreement and hereby~~ agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.

**3.2** ~~**Duties of Servicer Generally**~~**Forecast of Electricity Consumption**

~~(a)~~ ~~The Servicer shall:~~

~~(i)~~ ~~issue settlement statements to Electricity Vendors that include amounts in respect of the Clean Energy Adjustment as prescribed by the Act and the Regulations;~~

~~(ii)~~ ~~receive from Electricity Vendors amounts in respect of Electricity Vendor CEA Collections including payments made directly to the IESO as an Electricity Vendor (such amounts received being "**Servicer CEA Collections**");~~

~~(iii)~~ ~~hold and remit Servicer CEA Collections in accordance with Section 3.3;~~

~~(iv)~~ ~~receive information from Electricity Vendors in respect of CEA Consumer Invoice Amounts and Electricity Vendor CEA Collections and such other information as the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required;~~

~~(v)~~ ~~determine and record the IESO Deferral for each month and make any necessary corrections thereto in accordance with the Act and the Regulations;~~

~~(vi)~~ ~~forecast electricity demand by Specified Consumers for Reference Periods;~~

**The IESO shall:**

**(a)** ~~(vii)~~ provide ~~information~~ to the Board ~~in respect of forecast electricity demand or any other information the Board may require from the Servicer to facilitate the Board's determination of the rates at which~~**and the Financial Services Manager the forecasts of electricity consumption by** Specified Consumers ~~are to be invoiced so as to enable full recovery of the Clean Energy Adjustment in respect of any Reference Period;~~ **as contemplated by Section 8(3) of the Regulations; and**

~~(viii)~~ ~~respond to inquiries by Electricity Vendors, the Board or any other Governmental Authority with respect to the Clean Energy Adjustment;~~

~~(ix) investigate and handle delinquencies by Electricity Vendors regarding Servicer CEA Collections (and furnish reports with respect to such delinquencies to the Issuer);~~

~~(x) process and deposit Servicer CEA Collections and make periodic remittances to the Issuer in accordance with Section 3.3;~~

~~(xi) furnish periodic and current reports to the Issuer, the Board, the Indenture Trustee and the Rating Agencies, as may reasonably be required by the Issuer;~~

~~(xii) take all necessary action in connection with Funding Rebates as set forth herein and in the Regulations; and~~

~~(xiii) perform such other duties as may be reasonably required from time to time to be performed by it.~~

(b) ~~Without limiting the generality of Section 3.2(a), in furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with, the duties and responsibilities relating to data acquisition, consumption and settlement statement calculation, settlement, collections, posting, payment processing and remittance with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar assets for its own account and, if applicable, for others.~~**provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.**

~~(c) Notwithstanding anything to the contrary in this Agreement, the duties of the Servicer set forth in this Agreement shall be qualified and limited in their entirety by the Act, the Regulations, all applicable laws and the rules and regulations promulgated thereunder as in effect at the time such duties are to be performed.~~

**3.3 ~~Remittances~~ISO Deferral**

~~(a)~~ The **IESO shall:**

**(a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and**

**(b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.**

~~25847649.5~~

**3.4 Clean Energy Adjustments and Electricity Vendors**

**The Servicer shall:**

**(a)** **prior to receiving** Servicer ~~shall~~**CEA Receipts,** establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation ~~clearly~~ indicating that the funds deposited therein are held in trust for the benefit of the **Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or** owners of **an** Investment ~~Interests~~**Interest**. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account~~.~~**;**

**(b)** **prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:**

**(i)** **establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;**

**(ii)** **settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and**

**(iii)** **establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; [NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]**

**(c)** **request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;**

**(d)** **as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;**

**(e)** **as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the "Servicer CEA Receipts");**

**(f)** ~~(b) The Servicer shall~~ deposit ~~all~~**the** Servicer CEA ~~Collections~~**Receipts** into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within **[**two ~~Servicer~~ Business Days**]** of receipt by the Servicer and **the Issuer Share of** such Servicer CEA ~~Collections~~**Receipts** shall remain in the IESO Segregated Account until remitted in accordance with Section ~~3.3(d)~~ **3.6;**

**(g)** respond to inquiries by Electricity Vendors **with respect to the Clean Energy Adjustment and amounts payable in respect thereof;**

**(h)** **request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;**

**(i)** **review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);**

**(j)** **make reasonable efforts to contact each Electricity Vendor that:**

**(i)** **does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;**

**(ii)** **does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,**

**(iii)** **delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or**

**(iv)** **does not certify that it has established the segregated account required by Section 10(2) of the Regulations,**

**and attempt to resolve the applicable issue;**

**(k)** **on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■.**

**(l)** ~~(c) The IESO agrees and acknowledges that it holds all~~**hold the Issuer Share of** Servicer CEA ~~Collections~~**Receipts** and **the Issuer Share of** any other proceeds in

respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer, any other owner of Investment Interests, the Indenture Trustee and the Specified Creditors and that all such amounts will be remitted by the Servicer and remit such amounts in accordance with this Section 3.3 3.6 without any surcharge, fee, offset, charge or other deduction.

## 3.5 Reporting

The IESO further agrees not to make any claim to reduce its obligation to remit all Servicer CEA Collections received by it in accordance with this Agreement. Servicer shall:

(d) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Collections received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period. Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Collections on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Servicer Business Day.

(a) (e) On on or before the **[2nd] Servicer 8th Business Day]** following the end of each Billing Period, the Servicer shall prepare and deliver to the Issuer, the Indenture Trustee and the Rating Agencies a written report substantially in the form of Exhibit B (a "**Monthly Report**"). ;

## 3.4 [Funding Rebates]

**[NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]**

(b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;

(c) (a) On or before the **[4th]** Servicer Business Day following the end of each calendar month in which no Clean Energy Adjustment is billed to Specified Consumers, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Funding Rebate Statement**") setting out the aggregate amount of all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Financing Entity Expenses, and (iv) Tax Liabilities (net of Tax Refunds), that were incurred by or on behalf of the Issuer during the previous calendar month ("**Monthly Funding Expenses**"). report to the Issuer any unresolved matters referred to in Section 3.4(j);

(b) On or before the **[10th]** Servicer Business Day following receipt by the IESO of the Monthly Funding Rebate Statement, the IESO shall, as required by the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer in

~~immediately available funds, an amount in Canadian dollars equal to the Monthly Funding Expenses set forth in the applicable Monthly Funding Rebate Statement (the "**Funding Rebate**").~~

~~**3.5 Reporting Functions**~~

**(d)** ~~(a) Notification of Laws and Regulations. The Servicer shall~~ promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance **of which it becomes aware** that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement~~.~~**; and**

**(e)** ~~(b) Other Information. Upon~~**upon** the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, ~~the Servicer shall~~ provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the **Issuer** Investment Interest or the Regulatory Asset**,** to the extent it is reasonably available to the Servicer~~,~~ **and** as may be reasonably necessary and permitted by law**,** to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder. ~~In addition, the Servicer shall provide the Issuer and the Indenture Trustee, within a reasonable time after written request therefor, any information available to the Servicer or reasonably obtainable by it that is necessary to calculate the Clean Energy Adjustment.~~

**3.6 Remittances**

**(a)** Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA **Receipts** received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.

**(b)** Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA **Receipts** on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account **on each Business Day.**

**3.7 Limits to Obligations**

**Without in any way limiting the duties and obligations of the Servicer arising under the Act or the Regulations, the parties hereto agree the duties and obligations of the Servicer under this Agreement are limited as provided in this Section 3.7.**

**(a)** **The Servicer is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.**

**(b)** **The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.**

**(c)** **The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of** Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) **the collection from Specified Consumers of amounts due** in respect of such invoices and **the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.**

**(d)** **The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.**

**(e)** **The Servicer is under no obligation to initiate or prosecute any legal action relating to the collection of the Issuer Investment Interest.**

**3.8** ~~3.6~~ **Servicing and Maintenance Standards**

**(a)** The Servicer shall ~~monitor payments and impose collection policies on Electricity Vendors with respect to Electricity Vendor CEA Collections. On behalf of the Issuer, the Servicer shall: (a) manage, service, administer, collect and receive Servicer CEA Collections with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to the collection of other amounts from Electricity Vendors for its own account and, if applicable, for others; (b) follow standards, policies and procedures in performing its duties as Servicer that are customary for an electricity market operator and administrator that regularly performs settlement functions; (c) use all reasonable efforts, consistent with its customary servicing procedures, to receive and hold Servicer CEA Collections in trust for the benefit of the Issuer; (d) comply with each Requirement of Law, including all regulations and guidelines, applicable to and binding on it relating to its duties hereunder; and (e) provide all information to the Board as required by the Act and the Regulations. The Servicer shall follow such customary and usual practices and procedures as it shall deem necessary or advisable in its servicing of all or any portion of the Investment Asset and the Issuer Investment Interest, which may include, at the direction of the Issuer, the taking of legal action, at the Issuer's expense but subject to the priority~~

~~of payments set forth in **[Section 8.02(e)]** of the Indenture. In no event shall the Issuer Investment Interest be set off at any time by the IESO or any Permitted Successor thereof in connection with any default by such Person or otherwise.~~**discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance the Requirements of Law, including the Act and the Regulations and shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions. In** furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with **reasonable care and in material compliance with applicable Requirement of Laws**, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to **similar settlement activities on its own account.**

~~**3.7 Binding Effect of Servicing Obligations**~~

**(b)** **The** Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

**(c)** **Neither** the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment**.**

**3.9 Appointments**

**The** Servicer may at any time appoint any Person to **act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided** however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided **further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement** without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were **performing such obligations**. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, **and the Issuer shall not** have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section **3.11.**

**3.10 Term**

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under **Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off** (in each case, a "**Termination**

~~25847049.5~~**24817972.2**

**Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

**3.11 Resignation of Servicer**

**The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.**

**3.12 Mergers**

~~The obligations to continue to provide services and to receive and account for Servicer CEA Collections and related amounts will be binding upon the Servicer and any Permitted Successor so long as the Servicer CEA Collections have not been fully received and posted.~~ Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section ~~3.7~~**3.12** and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section ~~3.7~~**3.12**, then, upon satisfaction of all of the other conditions of this Section ~~3.7~~**3.12**, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

~~25847049.5~~[illegible]

~~**3.8 Limitation on Liability of Servicer and Others**~~

~~(a) Except as otherwise provided under this Agreement, including Section 6.1, neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that would otherwise be imposed by reason of negligence, recklessness or willful misconduct in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person, respecting any matters arising under this Agreement.~~

~~(b) Except as provided in this Agreement, the Servicer shall not be under any obligation to appear in, prosecute or defend any legal action relating to the Issuer Investment Interest that is not directly related to one of the Servicer's enumerated duties in this Agreement or related to its obligation to pay indemnification, and that in its reasonable opinion may cause it to incur any expense or liability; provided, however, that the Servicer will, at the direction of the Issuer, in respect of any Proceeding, undertake any action that is not specifically identified in this Agreement as a duty of the Servicer but that the Issuer reasonably determines is necessary or desirable in order to protect the rights and duties of the Issuer or the Indenture Trustee under this Agreement and the interests of Specified Creditors under the Indenture.~~

**3.13 ~~3.9~~ The IESO Not to Resign as Servicer**

Subject to the provisions of Section ~~3.7~~**3.12**, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

~~**3.10 Appointments**~~

**3.14 IESO Regulatory Obligation to Pay Carrying Costs**

(a) ~~Subject to Section 3.10(b), the~~ Servicer ~~may at any time appoint any Person to perform all or any portion of its obligations as Servicer hereunder; provided, however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided, further, that the Servicer shall remain obligated and be liable under this Agreement for the servicing and administering of the Issuer Investment Interest in accordance with the provisions hereof without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Investment Interest. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and none of the Issuer, the Indenture Trustee, Specified Creditors or any other Person shall have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.9.~~ **During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.**

(b) ~~The following matters shall be performed by the Electricity Vendors in accordance with the Act and shall not be considered an "appointment" for purposes of Section 3.10(a): (i) invoicing~~ Specified Consumers ~~in respect of the~~ Clean Energy Adjustment and ancillary matters related thereto; ~~(ii) collection from Specified Consumers of payments in respect of such invoices and remittance of such payments to the Servicer; and (iii) reporting to the Servicer the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and such other information the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required. The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations or in respect of the matters set out in this Section 3.10(b).~~ **On or before the 4th Business Day of each calendar month**, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of **Exhibit C (a "Monthly Carrying Costs Statement") setting out the amount of Carrying Costs in respect of the preceding calendar month ("Monthly Carrying Costs").**

~~**3.11 Effective Period and Termination**~~

**(c)** **On or before the 8th Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under** the Regulations, deliver or cause to be delivered to the Issuer, by wire **transfer or electronic funds** transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly **Carrying Costs set forth in the applicable Monthly Carrying Costs Statement.**

### 3.15 IESO Security for CEA Remittances

~~The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.~~**If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer and the Indenture Trustee, as security for any failure of Electricity Vendors, following [July 31, 2021], to remit the Electricity Vendor CEA Collections.**

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

Subject to Section 4.3, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer and the Indenture Trustee will rely thereon in paying the Purchase Price related to Transfers of ~~specified portions~~**Specified Portions** of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite **corporate** power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it~~, and to execute, deliver and carry out the terms of this Agreement, including, for greater certainty, acting as Servicer in accordance with this Agreement~~.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset~~,~~ **or** the servicing of related Investment Interests~~, the Issuer or the repayment when due of the Funding Obligations~~.

(c) Power and Authority. The IESO has the requisite **corporate** power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer ~~specified portions~~**Specified Portions** of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary **corporate** action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary **corporate** action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.

(f) No Proceedings. ~~There are no Proceedings or, to~~**To** the IESO's knowledge, ~~investigations~~**there are no Proceedings** pending or ~~Proceedings~~ threatened~~, before any Governmental Authority having jurisdiction over~~ **against** the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information.~~(i)~~ At the date hereof and as of each applicable Closing Date, **except in respect of information provided by a third party,** all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.

~~(ii) Each report and certificate delivered in connection with any filing made or information provided to the Board by the IESO in connection with the Act, including on behalf of the Issuer with respect to Clean Energy Adjustments, will constitute a representation and warranty by the IESO that each such report or certificate, as the case may be, is true and correct in all material respects; provided, however, that, to the extent any such report or certificate is based in part upon or contains assumptions, forecasts or other predictions of future events, the representation and warranty of the IESO with respect thereto will be limited to the representation and warranty that such assumptions, forecasts or other predictions of future events are reasonable based upon historical performance (and facts known to the IESO on the date such report or certificate is delivered).~~

(i) The Transfer. ~~On~~**After the completion of the Transfer on** the applicable Closing Date, the ~~specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice shall be validly Transferred to the Issuer and the~~ IESO will have no right, title or interest in the ~~related~~ Investment Interest **related to the Specified Portion of the Regulatory Assets** as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except ~~pursuant to any Co-Owner Agreement, no portion of~~**for Permitted Transfers,** the ~~Regulatory Asset~~**IESO** has ~~been~~**not** sold, transferred, assigned~~,~~ **or otherwise conveyed any interest in the Regulatory Asset to any Person.**

**(k) Liens. IESO has not** pledged or otherwise ~~conveyed by the IESO~~**granted a Lien** to any Person ~~other than the Issuer or the Indenture Trustee, and,~~**in the Regulatory Asset and** to the IESO's knowledge (after due inquiry), ~~no security agreement,~~**there is no registered** financing statement ~~or equivalent security or lien instrument~~ listing the IESO as debtor covering ~~all or a portion of the Regulatory Asset (or the corresponding Investment Interest upon the Transfer thereof) is on file or of record in any jurisdiction, except such as may have been filed or recorded in favour of the Issuer or the Indenture Trustee in connection with the Program Agreements.~~(k) ~~Title. The IESO is the sole owner of the specified portion of the Regulatory Asset that is to be Transferred to the Issuer on~~

~~the applicable Closing Date, free and clear of all Liens~~**or extending to the Regulatory Asset**.

(l) Tax Liens. ~~After due inquiry, the~~**The** IESO **(i)** is not aware**, after due inquiry,** of any judgment or tax lien filing against the IESO**, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada)**.

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

~~(i) is solvent and expects to remain solvent;~~

**(i)** ~~(ii)~~ reasonably believes that it will be able to pay its debts as they come due; and

**(ii)** ~~(iii)~~ is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

### 4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of an Investment Interest to the Issuer and the pledge thereof to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

### 4.3 Limitations on Representations and Warranties

Notwithstanding anything in this Agreement to the contrary, the IESO makes no representation or warranty **with respect to the collectability of the Issuer Share of Servicer CEA Receipts or** that the Issuer~~'s~~ Share of Servicer CEA ~~Collections will~~**Receipts** be sufficient to satisfy ~~in full~~ the Issuer's Funding Obligations.

## ARTICLE 5
## COVENANTS OF THE IESO

### 5.1 Existence

~~Subject to Section 3.9, so~~**So** long as any **Issuer** Funding Obligations are outstanding, the IESO (a) will keep in full force and effect its existence and remain validly

existing under the laws of the Province of Ontario, and (b) will obtain and preserve its qualifications to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Agreement and each other instrument or agreement to which the IESO is a party necessary for the proper administration of this Agreement and the transactions contemplated hereby.

### 5.2 No Transfer or Liens

Except for ~~(a) the~~ Transfers under this Agreement to the Issuer or ~~any Lien for the benefit of the Specified Creditors or the Indenture Trustee, and (b) following the Co-Owner Implementation Date, Transfers to other Financing Entities who enter into a Co-Owner Agreement with the Issuer and Liens granted in connection therewith to Persons advancing Funding Obligations to such other Financing Entities, the IESO will not sell, pledge, assign or transfer to any other Person, or~~ **Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not** grant, create, incur, assume or suffer to exist any Lien on~~, any portion of~~ the Regulatory Asset~~, whether existing as of the applicable Closing Date or thereafter created, or any interest therein~~ **or any portion thereof**. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, and will defend the right, title and interest of the Issuer and of the Indenture Trustee, on behalf of the Specified Creditors, in, to and under the Issuer Investment Interest against all claims of third parties claiming through or under the Transferor.

### 5.3 Notice of Liens

The IESO shall notify the Issuer and the Indenture Trustee promptly after becoming aware of any Lien on any portion of the Regulatory Asset~~, other than the Transfers hereunder and any Lien pursuant to the Program Agreements~~.

### 5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset~~,~~ the Investment Asset or Investment Interests, except to the extent that failure to so comply would not materially adversely affect the Issuer's~~,~~ **or** the Indenture Trustee's ~~or the Specified Creditors'~~ interests in the Issuer Investment Interest~~ under any of the Program Agreements~~, the value of the Issuer Investment Interest, the timing or amount of Clean Energy Adjustments payable by Specified Consumers or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

## 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations ~~other than Funding Rebates~~.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

~~(d) The IESO agrees that upon completion of a Transfer, the IESO shall reduce the balance in the Fair Hydro Variance Account by the Purchase Price and will adjust the Regulatory Asset accordingly.~~

**(d)** ~~(e)~~ (i) ~~in~~**In** all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the ~~specified portion~~**Specified Portion** of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, **and** (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement~~, and (iv) the IESO shall not sell any portion of the Regulatory Asset pursuant to the Act to any other Person unless a Co-Owner Agreement has been entered into and the Rating Agency Condition has been satisfied with respect thereto~~.

## 5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

## 5.7 Disclosure

The IESO shall provide ~~all~~**such non-confidential** information regarding ~~the~~ IESO, the ~~IESO Deferral, the~~ Regulatory Asset ~~or~~**and** the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for

inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents and represents that**, except in respect information provided by a third party,** all such information is, **as** at the respective dates of delivery to the Issuer, true and correct in all material respects, contains no misrepresentation and constitutes full, true and plain disclosure of all material facts relating to the IESO Disclosure.

### 5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

### ~~5.9 Co-Owner Agreements~~

~~The IESO shall not continue as or become a party to any purchase and sale agreement or similar arrangement (other than this Agreement) under which it sells all or any portion of the Regulatory Asset unless (i) the Rating Agency Condition shall have been satisfied, (ii) the Indenture Trustee, the Transferor and the other parties to such additional arrangement shall have entered into a Co-Owner Agreement in connection therewith, and (iii) the terms of the documentation evidencing such purchase and sale arrangement or similar arrangement shall expressly exclude the Issuer Investment Interest (including the Issuer Share of any Servicer CEA Collections) from any receivables, rights or other assets pledged or sold under such arrangement and unless the purchaser under such arrangement is a Financing Entity.~~

### 5.9 ~~5.10~~ Access to Certain Records and Information Regarding Investment Interest

The IESO shall provide to the Issuer and the Indenture Trustee access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA ~~Collections~~**Receipts**, as is reasonably required for the Issuer and the Indenture Trustee to confirm compliance by the IESO with its obligations under this Agreement~~ and any other Program Agreements to which the IESO is a party~~. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section ~~5.10~~**5.9** shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section ~~5.10~~**5.9**.

### 5.10 ~~5.11~~ Maintenance of Operations

Subject to Section ~~3.7~~**3.12**, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario ~~in order to provide service~~ so long as it is acting as the Servicer under this Agreement.

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer, the Indenture Trustee (for itself and for the benefit of the Specified Creditors), the Manager~~, the Administrative Agent~~ and each of their respective trustees, officers, directors, employees and agents (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against any such Person as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; **and** (ii) the IESO's breach of any of its representations or warranties under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and ~~(iii) any litigation and related expenses relating to the IESO's status and obligations as Servicer (other than any Proceeding the IESO is required to institute under this Agreement)~~, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice ~~(or, in the case of the Indenture Trustee, receipt of notice by a Responsible Officer only)~~ of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party

shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, (iii) the IESO ~~shall authorize~~**authorizes** the Indemnified Party to employ separate counsel at the expense of the IESO, or (iv) in the case of the Indenture Trustee, such action exposes the Indenture Trustee to a material risk of criminal liability or forfeiture or a Servicer Default has occurred and is continuing. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section ~~3.7~~**3.12**) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to **Section 3.11 of** this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO. ~~Other than provided in the preceding sentence, the~~

**(e)** **The** IESO shall not **be required to** indemnify any party under this Section 6.1 for any **losses resulting from** changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

~~25847049.5~~

**(f)** ~~(e)~~ Except to the extent expressly provided in this Agreement (including the payment of the Purchase Price), the IESO hereby releases and discharges the Issuer ~~and the Indenture Trustee,~~ and each of ~~their respective~~**its** trustees, officers, directors and agents (collectively, the "**Released Parties**"), from any and all actions, claims and demands whatsoever, whenever arising, which the IESO, in its capacity as Servicer or otherwise, shall or may have against any such Person relating to the Investment Interest or the IESO's activities with respect thereto, other than any actions, claims and demands arising out of the willful misconduct, bad faith or gross negligence of the Released Parties.

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account ~~on behalf of the Issuer~~ any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer ~~(with a copy to the Indenture Trustee)~~ or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer ~~(with a copy to the Indenture Trustee)~~ or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the

same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture Trustee) by the Issuer or the Indenture Trustee or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; **or**

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs; ~~or~~

~~(f) the termination or withdrawal of the "Servicing Guarantee" under the Provincial Protection and Assurances Agreement. **[NTD: Subject to finalization of the Provincial Protection and Assurances Agreement.]**~~

then, and in each and every case, the Indenture Trustee shall, upon the instruction of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~**as provided for under the Trust Indenture**, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (and to the Indenture Trustee if given by the Specified Creditors) (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), the Specified Creditors and the Indenture Trustee (or any of their representatives) shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the ~~Investment Interest.~~**Issuer.** On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Indenture Trustee is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, ~~the IESO Deferral,~~ the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer, the Issuer and the Indenture Trustee in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall

not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

**7.2 Appointment of Successor Servicer**

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Indenture Trustee may, and at the written direction and with the consent of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~**as provided for under the Trust Indenture** shall, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer with the Issuer's prior written consent thereto (which consent shall not be unreasonably withheld), and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Indenture Trustee may, at the direction of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~**as provided for under the Trust Indenture**, petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Indenture Trustee be liable for its appointment of a Successor Servicer. The Indenture Trustee's expenses incurred under this Section 7.2(a) shall be at the sole expense of the Issuer and payable from the Collection Account as provided in **[Section 8.02]** of the Indenture.

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

**7.3 Waiver of Past Defaults**

The Indenture Trustee, with the written consent of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~**as provided for under the Trust Indenture**, may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences, except a default in making any required deposits to the Collection Account in accordance with this Agreement. Upon any such waiver of a past

default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

**7.4 Notice of Servicer Default**

The Servicer shall deliver to the Issuer, the Manager, the Indenture Trustee and the Rating Agencies promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

**7.5 Cooperation with Successor Servicer**

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

## ARTICLE 8
## MISCELLANEOUS

**8.1 Amendment**

~~(a)~~ This Agreement may be amended in writing by the IESO ~~and~~, the Issuer ~~with (i) the prior written consent of~~ **and** the Indenture Trustee~~, and (ii) the~~ **and with** satisfaction of the Rating Agency Condition. Promptly after the execution of any such amendment ~~or consent~~, the Issuer shall furnish copies of such amendment ~~or consent~~ to each of the Rating Agencies.

**8.2 Withholding Rights**

**The parties shall be entitled to deduct and withholding from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.**

**8.3 No Partnership**

**Each party expressly disclaims any intention to create a partnership,** and none of the Issuer, the **IESO or the Indenture Trustee will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.**

~~(b) Prior to the execution of any amendment to this Agreement, the Issuer and the Indenture Trustee shall be entitled to receive and rely upon an Opinion of Counsel, which counsel may be an employee of or counsel to the Issuer or the IESO and which shall be reasonably satisfactory to the Indenture Trustee, or, in the Indenture Trustee's sole judgment, external counsel of the IESO stating that the execution of such amendment is authorized and permitted by this Agreement and that all conditions precedent provided for in this Agreement relating to such amendment have been complied with. The Issuer and the Indenture Trustee may, but shall not be obligated to, enter into any such amendment that affects their own rights, duties, indemnities or immunities under this Agreement or otherwise.~~

**8.4 ~~8.2~~ Notices**

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
~~[Address]~~**120 Adelaide Street West, Suite 1600**
**Toronto, Ontario M5H 1T1**

Attention: ~~■~~
**Chief Financial Officer, General Counsel and Associate General Counsel**
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

**[Financing Entity]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

(c) in the case of the Indenture Trustee:

■
**[Address]**

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

## 8.5 ~~8.3~~ Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

## 8.6 ~~8.4~~ Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO, the Issuer and, to the extent provided herein or in the other Program Agreements, the Indenture Trustee (for its own benefit and for the benefit of the Specified Creditors) and the other Persons expressly referred to herein, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

## 8.7 ~~8.5~~ Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## 8.8 ~~8.6~~ Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

## 8.9 ~~8.7~~ Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## 8.10 ~~8.8 Assignment~~Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to ~~any mortgage, pledge, assignment and~~the grant of a ~~security interest~~Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors ~~of~~against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors. ~~In no event shall the Indenture Trustee have any liability for the representations, warranties, covenants, agreements or other obligations of the Issuer hereunder or in any of the certificates delivered pursuant hereto, as to all of which any recourse shall be had solely to the assets of the Issuer subject to the availability of funds therefor under Section [8.02] of the Indenture.~~

## 8.11 ~~8.9~~ Limitation of Liability of Indenture Trustee

It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Indenture Trustee, not individually or personally but solely as Indenture Trustee on behalf of the Specified Creditors, in the exercise of the powers and authority conferred and vested in it. The Indenture Trustee in acting hereunder is entitled to all rights, benefits, protections, immunities and indemnities accorded to it under the Indenture.

## 8.12 ~~8.10~~ Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's

activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.10~~**8.12**, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

**8.13** ~~**8.11**~~ **Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof; provided, however, that no such waiver delivered by the Issuer shall be effective unless the Indenture Trustee has given its prior written consent thereto. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor

in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

~~**8.12 Indenture Trustee Actions**~~

~~In acting hereunder, the Indenture Trustee shall have the rights, protections and immunities granted to it under the Indenture.~~

~~**8.13 Issuer Trustee**~~

~~In acting hereunder, the Issuer Trustee shall have the rights, protections and immunities granted to it under the Declaration of Trust.~~

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By:
Name:
Title:

By:
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor and Servicer**

By:
Name:
Title:

By:
Name:
Title:

~~**ACKNOWLEDGED AND ACCEPTED:**~~

**[INDENTURE TRUSTEE]**
**as Indenture Trustee**

By:
Name:
Title:

By:
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its ~~desire~~**offer** to transfer to the Issuer on the Closing Date set out below, on a fully serviced basis, the ~~specified portion~~**Specified Portion** of the Regulatory Asset set out below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the ~~specified portion~~**Specified Portion** of the Regulatory Asset set out below, on a fully serviced basis, ~~**[and (ii) the Transferor's agreement to pay to the Issuer all (a) Funding Costs, (b) Finance Reserve Deposits, (c) Financing Entity Expenses, and (d) Tax Liabilities (net of Tax Refunds) that are incurred by the Issuer in connection with such Transfer,]**~~[4] the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date, (i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price**,** and the Regulatory Asset shall be adjusted accordingly; and (ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any

[4] ~~Funding Rebate language to be included in Transfer Notice only when Clean Energy Adjustment is not being charged.~~

adverse claim, and shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. **The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].**

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

See Attached

## MONTHLY REPORT

**[NTD: Subject to continuing review by the Dealers and ~~Counsel to confirm form of Monthly IESO Report~~their counsel.]**

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted~~ by **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.3~~■ of the Master Transfer and Servicing Agreement the Servicer hereby certifies in respect of the Billing Period corresponding to the calendar month of ■, ■, as follows:

| | **Item** | **Amount** |
|---|---|---|
| (A) | Servicer CEA ~~Collections~~**Receipts**: | $■ |
| (B) | Balance of Collection Account: | $■ |

**[NTD: Any additional information considered necessary for OPG/IESO to be included.]**

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT C**

**FORM OF MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT**

See Attached

**MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT**

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the "**Indenture Trustee**"). Capitalized terms used but not defined in this Monthly ~~Funding Rebate~~**Carrying Costs** Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.4(a)~~**3.14** of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly ~~Funding Expenses incurred by the Issuer~~**Carrying Costs** in respect of the calendar month of ■, ■ are as follows:

| ~~Monthly Funding Expense~~ | **Amount** |
|---|---|
| Funding ~~Costs~~**costs**: | $■ |
| ~~Finance Reserve Deposits~~**Derivative payments to be made**: | $■ |
| **Amounts deposited into accounts other than capital accounts:** | **$■** |
| Financing ~~Entity Expenses~~**entity expenses**: | $■ |
| Tax ~~Liabilities (net of Tax Refunds)~~**liabilities**: | $■ |
| ~~Total Monthly Funding Expense~~**Subtotal**: | $■ |
| **LESS:** | |
| **Amounts withdrawn from accounts other than capital accounts:** | |
| **Derivative payments to be received:** | |
| **Tax refunds:** | **$■** |
| **Subtotal:** | **$■** |
| **Monthly Carrying Costs** | **$■** |

~~**[NTD: Any additional information considered necessary for OPG/IESO to be included.]**~~

In accordance with Section ~~3.4~~**3.14**(b) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the ~~Total~~ Monthly ~~Funding Expense~~**Carrying Costs** set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

**[NTD: Wire transfer instructions to be provided by OPG.]**

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on October-25-17 12:04:10 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\rramchan\Desktop\Fair Hydro - Master Transfer  Servicing Agreement (Alternative Funding Rebate Regulation Version).docx |
| Description | Fair Hydro - Master Transfer  Servicing Agreement (Alternative Funding Rebate Regulation Version) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24367979/3 |
| Description | #24367979v3<TorysAtWork> - Fair Hydro - MTSA (Osler Oct 20 Draft) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 437 |
| Deletions | 421 |
| Moved from | 29 |
| Moved to | 29 |
| Style change | 0 |
| Format changed | 0 |

| | |
|---|---|
| Total changes | 916 |

# SECURITY AGREEMENT

**THIS AGREEMENT** made as of the ____ day of December, 2017,

**BETWEEN:**

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998,

(hereinafter referred to as the "**Grantor**"),

**IN FAVOUR OF: -**

**[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario,

(hereinafter referred to as the "**Secured Party**"),

**ACKNOWLEDGED AND ACCEPTED BY:**

**[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee,

(hereinafter referred to as the "**Indenture Trustee**"),

**WHEREAS** under Regulation 206/17 made under the *Ontario Fair Hydro Plan Act, 2017* (the "**Regulation**"), the Grantor is required to pay and remit to the Secured Party any amounts charged to the Grantor by the Secured Party in respect of Carrying Costs of the Secured Party during the period beginning on April 1, 2017 and ending on June 30, 2021 (the "**Statutory Obligation**");

**AND WHEREAS** the Grantor (collectively referred to as the "**Parties**") has agreed to enter into a security agreement in favour of the Secured Party as security for, inter alia, the performance of the Statutory Obligation;

**AND WHEREAS** this Agreement has been assigned by the Secured Party, by way of security, to the Indenture Trustee and the Indenture Trustee wishes to acknowledge and accept the terms of this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, for and in consideration of the premises, mutual covenants and conditions herein contained and such other lawful and valuable consideration the receipt of sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## 1. INTERPRETATION

### 1.1 Defined Terms

In this Agreement, unless there is something in the context or subject matter inconsistent therewith,

(a) "**Account**" shall have the meaning attributed to such term in the PPSA;

(b) "**Appropriation**" shall have the meaning ascribed to such term in the *Financial Administration Act*, R.S.O. 1990, c. F-12, as amended;

(c) "**Breach**" shall have the meaning attributed to such term in Section 6.1;

(d) "**Business Day**" means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;

(e) "**Carrying Costs**" shall have the meaning attributed to such term in the Regulation;

(f) "**Collateral**" shall have the meaning attributed to such term in Section 2.1;

(g) "**Excluded Accounts**" means all amounts payable to the Grantor pursuant to Appropriations;

(h) "**Money**" shall have the meaning attributed to such term in the PPSA;

(i) "**Permitted Liens**" means liens approved in writing by the Secured Party and the Indenture Trustee ;

(j) "**PPSA**" means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;

(k) "**Proceeds**" shall have the meaning attributed to such term in the PPSA;

(l) **"Receiver"** shall have the meaning attributed to such term in Section 6.2 of this Agreement;

(m) "**Regulation**" shall have the meaning attributed to such term in the recitals hereto;

(n) "**Statutory Obligation**" shall have the meaning attributed to such term in the recitals hereto.

### 1.2 Other Usages

References to "this Agreement", "hereof", "herein", "hereto" and like references refer to this Security Agreement and not to any particular Article, Section or other subdivision of this Agreement.

### 1.3 Plural and Singular

Where the context so requires, the words importing the singular number shall include the plural and vice versa.

### 1.4 Headings

The division of this Agreement into Articles and Sections and the insertion of headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### 1.5 Applicable Law

This Agreement and all documents delivered pursuant hereto shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties do hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### 1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court, this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

### 1.7 Time of the Essence

Time shall in all respects be of the essence of this Agreement.

### 1.8 Recitals and Schedules

Each and every one of the recitals and schedules which are referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

## 2. SECURITY INTEREST

### 2.1 Grant of Security Interest

As general and continuing security for the payment and performance of the Statutory Obligation, the Grantor hereby assigns, transfers, sets over and grants a first-priority security interest to the Secured Party in the following (collectively, the "**Collateral**"):

(a) all Accounts, debts, choses in action and demands of every nature and kind, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Grantor, excluding Excluded Accounts;

(b) all deeds, documents, writings, papers and books relating to or being records of the property described in Section 2.1(a); and

(c) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

Whenever used elsewhere in this Agreement, the expression "**security interest**" refers to the security interest created in this Section 2.1.

### 2.2 Attachment of Security Interest

The Grantor acknowledges and agrees that (i) value has been given, (ii) the Grantor has rights in the Collateral, and (iii) the security interest shall attach to existing Collateral upon execution of this Agreement by the Grantor and to each item of after-acquired Collateral at the time that the Grantor acquires any rights therein.

## 3. COVENANTS OF THE GRANTOR

### 3.1 Covenants

The Grantor hereby covenants and agrees with the Secured Party as follows:

(a) Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.

(b) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.

(c) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.

(d) To deliver to the Secured Party such information concerning the Collateral or the Grantor as the Secured Party may reasonably request from time to time.

(e) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby and to accomplish the intention of this Agreement.

### 3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the

Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

## 4. DEALING WITH COLLATERAL

### 4.1 Grantor's Rights before Breach

Until the occurrence of a Breach and subject to the terms hereof, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby or the value of the Collateral or which would be inconsistent with or violate the Regulation, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

### 4.2 General Restrictions

The Grantor shall not, without the prior written consent of the Secured Party:

(a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business;

(b) release, surrender or abandon possession of the Collateral or any part thereof; or

(c) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

### 4.3 Release by the Secured Party

The Secured Party may, at its discretion but subject to the written approval of the Indenture Trustee, at any time release from the security interest created by this Agreement any part or parts of the Collateral or any other security or any surety for the Statutory Obligation either with or without sufficient consideration therefor without thereby releasing any other part of the Collateral or any person from this Agreement.

## 5. REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties

The Grantor hereby represents and warrants to the Secured Party, the matters set out below:

(a) **Incorporation and Qualifications** – The Grantor is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement.

(b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The

execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

(c) **No Other Business Names or Styles** – The Grantor does not carry on business under or use any name or style other than the name(s) specified in Schedule A to this Agreement including.

(d) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.

(e) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the Collateral free and clear of any liens other than Permitted Liens.

(f) **Grantor Information** – Schedule A sets forth (a) the Grantor's jurisdiction of incorporation, (b) the location of the Grantor's registered office and business operations and records, and (c) the Grantor's exact legal name (in English and French).

(g) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

### 5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement or in any certificate or other document delivered by or on behalf of the Grantor to or for the benefit of the Secured Party are material, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

## 6. BREACH AND ENFORCEMENT

### 6.1 Enforceability of Security

The security hereby constituted shall become enforceable upon the occurrence of any of the following events each of which shall constitute a "**Breach**":

(a) the Grantor is in breach of the Statutory Obligation;

(b) any representation or warranty made or deemed made by or on behalf of the Grantor to the Secured Party under or in connection with this Agreement shall be materially false on the date as of which made; or

(c) any breach by the Grantor of any of the covenants, terms or provisions of Article 3 of this Agreement.

**6.2 Remedies**

At any time after the happening of any Breach, the Secured Party shall have the following rights, powers and remedies:

(a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;

(b) to make payments to parties having prior charges or encumbrances on the Collateral;

(c) to preserve, protect and maintain the Collateral;

(d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;

(e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;

(f) to enjoy and exercise all of the rights and remedies of a secured party under the PPSA;

(g) to notify the account debtors or obligors under any Accounts (other than Excluded Accounts) of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and, upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and

(h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

### 6.3 Special Rules re Accounts

After the security hereby constituted becomes enforceable,

(a) all Money or other form of payment received by the Grantor in respect of all of its Accounts shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and

(b) the Grantor shall not adjust, settle or compromise the amount or payment of any Accounts, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

### 6.4 Receiver as Agent

The Receiver shall be deemed to be the agent of the Grantor for the purpose of establishing liability for the acts or omissions of the Receiver and the Secured Party shall not be liable for such acts or omissions and, without restricting the generality of the foregoing, the Grantor hereby irrevocably authorizes the Secured Party to give instructions to the Receiver relating to the performance of its duties as set out herein.

### 6.5 Expenses of Enforcement

The Grantor shall pay to the Receiver the remuneration of the Receiver and all costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis) properly incurred by the Receiver pursuant to its appointment and the exercise of its powers hereunder, and shall pay to the Secured Party and the Receiver as required all amounts of Money (including interest thereon) borrowed or advanced by either of them pursuant to the powers set out herein, and the obligations of the Grantor to the Secured Party and the Receiver pursuant to this Section 6.5 shall be payable on demand.

### 6.6 Indulgences and Releases

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor, sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the Statutory Obligation or the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

### 6.7 No Liability for Failure to Exercise Remedies

The Secured Party and the Receiver shall not be liable or accountable to the Grantor or to any other person for any failure to exercise any of the rights, powers and remedies set out in this Agreement, and shall not be bound to commence, continue or defend proceedings for the purpose of preserving or protecting any rights of the Secured Party, the Receiver, the Grantor or any other party in respect of the same.

### 6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be applied as follows:

(a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;

(b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

(c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and

(d) fourth, in payment of any surplus in accordance with applicable law.

### 6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

### 6.10 Restriction on Grantor

Upon the Secured Party taking possession of the Collateral or the appointment of a Receiver, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

### 6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

### 6.12 Care by the Secured Party

The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in the Secured Party's possession if it takes such action for

that purpose as the Grantor requests in writing, but failure of the Secured Party to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Secured Party to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Grantor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

### 6.13 Application by Grantor re: Receiver

The Grantor hereby irrevocably waives its right to make an application to any court with respect to the appointment, powers or remuneration of the Receiver.

## 7. GENERAL

### 7.1 Waiver

Any breach by the Grantor of any of the provisions contained in this Agreement or any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

### 7.2 The Secured Party as Attorney

The Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, after the happening of any Breach, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

### 7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

### 7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

### 7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

### 7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
**[Address]**

Attention: ■
Email: ■
Facsimile: ■

In the case of the Secured Party:

**[Financing Entity]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■
Facsimile: ■

### 7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person (the "**Assignee**"). The Assignee shall, to the extent of the interest so assigned or transferred, be entitled to the benefit of and the right to enforce this Agreement to the same extent as if the Assignee were the Secured Party. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor's rights, duties or obligations hereunder without the prior written consent of the Secured Party.

### 7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

### 7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by all the Parties.

### 7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

### 7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

### 7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

### 7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first written above.

**[FINANCING ENTITY]**, by its Manager,
**ONTARIO POWER GENERATION INC., as Secured Party**

By: _____
Name:
Title:

By: _____
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Grantor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ACKNOWLEDGED AND ACCEPTED:**

**[INDENTURE TRUSTEE]**
**as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

## SCHEDULE A

## GRANTOR INFORMATION

1. **Grantor's exact legal name: Independent Electricity System Operator**

   **■ [French]**

2. **Grantor's jurisdiction of incorporation: Ontario**

3. **Grantor's registered office address: ■**

4. **Location of Grantor's business operations and records: ■**

**Torys Draft:**
**October 26, 2017**

**[ISSUER]**

**as Issuer**

**AND**

**[INDENTURE TRUSTEE]**

**as Indenture Trustee**

# TRUST INDENTURE

**DATED AS OF [■], 2017**

## TABLE OF CONTENTS


**Page**

**RECITALS OF THE ISSUER ..... 1**

**AGREEMENT OF THE PARTIES ..... 1**

**ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION ..... 1**

1.01 Definitions ..... 1
1.02 Compliance Certificates and Opinions ..... 2
1.03 Form of Documents Delivered to Indenture Trustee ..... 3
1.04 Actions by Noteholders ..... 3
1.05 Actions of Other Specified Creditors ..... 6
1.06 Effect of Headings and Table of Contents ..... 6
1.07 Successors and Assigns ..... 6
1.08 Severability ..... 6
1.09 Governing Law ..... 6
1.10 Counterparts ..... 7
1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement ..... 7
1.12 Non-Business Days ..... 7
1.13 Interest Act ..... 7
1.14 Currency ..... 7
1.15 References to Acts of the Issuer ..... 7
1.16 Judgment Currency ..... 8

**ARTICLE II COLLATERAL ..... 8**

2.01 Security for Obligations Secured ..... 8
2.02 Recording, Etc ..... 10
2.03 Use of Collateral ..... 11
2.04 Suits To Protect the Collateral ..... 12
2.05 Purchaser Protected ..... 12
2.06 Powers Exercisable by Receiver or Indenture Trustee ..... 12
2.07 Determinations Relating to Collateral ..... 12
2.08 Satisfaction and Discharge of Indenture ..... 13
2.09 Release of all Collateral ..... 14
2.10 Certain Commercial Law Representations and Warranties ..... 14

**ARTICLE III NOTE FORMS ..... 15**

3.01 Forms Generally ..... 15
3.02 Forms of Notes ..... 15
3.03 Form of Indenture Trustee's Certificate of Authentication ..... 16
3.04 Notes Issuable in the Form of a Global Note ..... 16
3.05 Temporary Global Notes and Permanent Global Notes ..... 18
3.06 Beneficial Ownership of Global Notes ..... 20

**TABLE OF CONTENTS**
**(continued)**

**Page**


3.07 Notices to Depository ..... 20
3.08 CUSIP Numbers ..... 20

**ARTICLE IV THE NOTES ..... 21**

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series, Class or Tranche of Notes ..... 21
4.02 Denominations ..... 24
4.03 Execution, Authentication and Delivery and Dating ..... 24
4.04 Temporary Notes ..... 25
4.05 Registration, Transfer and Exchange ..... 25
4.06 Mutilated, Destroyed, Lost and Stolen Notes ..... 29
4.07 Persons Entitled to Payment ..... 30
4.08 Cancellation ..... 31
4.09 Protection of Notes ..... 31
4.10 New Issuances of Notes ..... 31

**ARTICLE V CONDITIONS PRECEDENT ..... 32**

5.01 Conditions Precedent for Incurrence of Indebtedness ..... 32
5.02 No Consent ..... 33
5.03 Conditions Precedent for the Incurrence of other Obligations Secured ..... 34
5.04 Acknowledgements ..... 34

**ARTICLE VI SUBORDINATION ..... 34**

6.01 Subordination ..... 34
6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations ..... 35
6.03 Rights of Specified Creditors Preserved ..... 35
6.04 Renewal or Extension of Senior Funding Obligations ..... 36

**ARTICLE VII ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS ..... 36**

7.01 Available Collections ..... 36
7.02 Issuer Accounts ..... 36
7.03 Investment of Funds in the Issuer Accounts ..... 39
7.04 Allocation of Amounts on Deposit in the Collection Account ..... 40
7.05 Allocation of Amounts on Deposit in the Other Issuer Accounts ..... 43
7.06 Payments to be Held in Trust ..... 44
7.07 Application of Trust Money ..... 44

**ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES ..... 44**

8.01 Events of Default ..... 44
8.02 Acceleration of Maturity; Rescission and Annulment ..... 45

**TABLE OF CONTENTS**
**(continued)**

**Page**


8.03 Waiver of Past Defaults ..... 47
8.04 Notice of Defaults ..... 47
8.05 Remedies Generally ..... 48
8.06 Default Interest and Expenses ..... 48
8.07 Indenture Trustee May File Proofs of Claim ..... 49
8.08 Indenture Trustee May Enforce Claims Without Possession of Notes ..... 49
8.09 Indenture Trustee May Elect to Hold the Collateral ..... 50
8.10 Termination by Indenture Trustee of Manager and Servicer ..... 50
8.11 Control by Debtholders ..... 50
8.12 Limitation on Suits ..... 50
8.13 Application of Money Following an Event of Default ..... 51
8.14 Limited Recourse ..... 53
8.15 Restoration of Rights and Remedies ..... 53
8.16 Rights and Remedies Cumulative ..... 53
8.17 Delay or Omission Not Waiver ..... 54
8.18 Waiver of Stay or Extension Laws ..... 54
8.19 Indenture Trustee Appointed Attorney ..... 54
8.20 Disclaimer of Marshalling ..... 55

**ARTICLE IX THE INDENTURE TRUSTEE ..... 55**

9.01 Certain Duties and Responsibilities ..... 55
9.02 Certain Rights of Indenture Trustee ..... 56
9.03 Not Responsible for Recitals or Issuer Funding Obligations ..... 58
9.04 May Hold Notes ..... 58
9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity ..... 58
9.06 Corporate Indenture Trustee Required; Eligibility ..... 59
9.07 Resignation and Removal; Appointment of Successor ..... 59
9.08 Acceptance of Appointment by Successor ..... 61
9.09 Merger, Conversion, Consolidation or Succession to Business ..... 61
9.10 Trust Indenture Legislation ..... 62
9.11 Representations and Covenants of the Indenture Trustee ..... 62
9.12 Indenture Trustee's Application for Instructions from the Issuer ..... 62
9.13 Appointment of Co-Trustee or Separate Indenture Trustee ..... 63
9.14 Preservation of Information; Communications to Debtholders ..... 64
9.15 Acceptance of Trusts by Indenture Trustee ..... 65
9.16 Paying Agent ..... 65

**ARTICLE X MEETINGS ..... 67**

10.01 Conduct of Meetings ..... 67
10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution ..... 69
10.03 Extraordinary Resolution ..... 71
10.04 Declaration by Chairman of Result of Vote ..... 72

**TABLE OF CONTENTS**
**(continued)**

**Page**


10.05 Minutes ..... 72
10.06 Signed Instruments ..... 72
10.07 Persons Who May Attend ..... 72
10.08 Binding Effect of Resolutions ..... 72
10.09 Notes Regarded as Not Outstanding for Certain Purposes ..... 73

**ARTICLE XI SUPPLEMENTAL INDENTURES ..... 73**

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors ..... 73
11.02 Supplemental Indentures and Amendments with Consent of Debtholders ..... 75
11.03 Execution of Amendments and Supplemental Indentures ..... 76
11.04 Effect of Amendments and Supplemental Indentures ..... 76
11.05 Reference in Notes to Supplemental Indentures ..... 77

**ARTICLE XII REPRESENTATIONS AND WARRANTIES OF THE ISSUER ..... 77**

12.01 Representations and Warranties of the Issuer ..... 77

**ARTICLE XIII COVENANTS OF THE ISSUER ..... 79**

13.01 Payment of Principal and Interest ..... 79
13.02 Use of Proceeds ..... 79
13.03 Maintenance of Office or Agency ..... 79
13.04 Legal Existence ..... 80
13.05 Separateness Covenants ..... 80
13.06 Compliance with Laws ..... 81
13.07 Performance of Obligations ..... 81
13.08 Funding Obligations ..... 81
13.09 Financial Statements ..... 82
13.10 Statement as to Compliance ..... 82
13.11 Payment Instruction ..... 82
13.12 Notice of Events of Default ..... 82
13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors ..... 83
13.14 Other Positive Covenants ..... 83
13.15 Rule 144A Information ..... 84
13.16 Further Instruments and Acts ..... 84
13.17 No Other Business ..... 84
13.18 Amendments to Program Agreements ..... 84
13.19 Issuer May Consolidate, Etc., Only on Certain Terms ..... 85
13.20 Successor Substituted ..... 86
13.21 Guarantees, Loans, Advances and Other Liabilities ..... 86
13.22 Capital Expenditures ..... 86
13.23 Restricted Payments ..... 86

**TABLE OF CONTENTS**
**(continued)**

**Page**

13.24 No Borrowing ..... 87
13.25 Other Negative Covenants ..... 87
13.26 Indenture Trustee May Perform Covenants ..... 87

**ARTICLE XIV MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS ..... 88**

14.01 Management Agreement ..... 88
14.02 Credit Enhancement Agreements ..... 88

**ARTICLE XV NOTICES ..... 89**

15.01 Notice to Issuer ..... 89
15.02 Notice to the Indenture Trustee ..... 89
15.03 Notice to Noteholders ..... 90
15.04 Notice to Other Specified Creditors ..... 91
15.05 Notice to Rating Agencies ..... 91
15.06 Change of Address ..... 91

**ARTICLE XVI MISCELLANEOUS ..... 91**

16.01 No Petition ..... 91
16.02 U.S. Tax Treatment ..... 92
16.03 Alternate Payment Provisions ..... 92
16.04 Final Distribution ..... 92
16.05 Force Majeure ..... 93
16.06 Delivery of Executed Copies ..... 93

**SCHEDULE A — DEFINED TERMS**
**EXHIBIT 1 — FORM OF PAYMENT INSTRUCTIONS**

This **TRUST INDENTURE**, between **[ISSUER]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee (the "**Indenture Trustee**"), is made and entered into as of [■], 2017.

## RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of Funding Obligations in one or more Series, Classes or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;

(b) [all other terms used herein which are defined in the Master Transfer and Servicing Agreement, either directly or by reference therein, have the meanings assigned to them therein;][1]

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

[1] **NTD**: Defined terms from Master Transfer and Servicing Agreement to be included in Schedule A. Schedule A will be a master glossary for all Program Agreements.

(d) unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;

(e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Compliance Certificates and Opinions**

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series, Class or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Article V and this Section 1.02, as applicable, in connection with the first authentication of Notes of such Series, Class or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

**1.03 Form of Documents Delivered to Indenture Trustee**

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**1.04 Actions by Noteholders**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action (collectively, an "**Action**") provided by this Indenture to be given or taken by Noteholders of any Series, Class or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. If Notes of a Series, Class or Tranche are issuable in whole or in part as Bearer Notes, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at

any meeting of Noteholders duly called and held in accordance with the provisions of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any notary public or other officer authorized by applicable law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or limited liability company, or a partner of a partnership, on behalf of such corporation, limited liability company or partnership, such certificate or affidavit will also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Indenture Trustee deems sufficient.

(c) (i) The ownership of Registered Notes will be proved by the Note Register.

(ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.

(d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the

Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

(e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.

(f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.

(g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.

(h) Without limiting the generality of the foregoing, unless otherwise specified pursuant to Section 4.01 or pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided

in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than 90 days after such record date.

**1.05 Actions of Other Specified Creditors**

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

**1.06 Effect of Headings and Table of Contents**

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

**1.08 Severability**

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**1.09 Governing Law**

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

**1.10 Counterparts**

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

**1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement**

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

**1.12 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.13 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

**1.14 Currency**

Unless stated otherwise, all amounts herein are stated in Dollars.

**1.15 References to Acts of the Issuer**

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or

a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

### 1.16 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.

(b) The term "**rate of exchange**" in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## COLLATERAL

### 2.01 Security for Obligations Secured

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

(a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:

(i) the Issuer Investment Interest;

(ii) the Collection Account, the Refinancing Account, each Finance Reserve Account, each Capital Reserve Account and each Supplemental Reserve Account (including all Sub-Accounts of each of the foregoing);

(iii) all Eligible Investments and all investment property, money and other property held in the Collection Account, the Refinancing Account, any Finance Reserve Account, any Capital Reserve Account or any Supplemental Reserve Account (including any Sub-Accounts of each of the foregoing);

(iv) all rights, benefits and powers of the Issuer under any Program Agreement;

(v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;

(vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;

(vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;

(viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;

(ix) all amounts received with respect to all of the foregoing; and

(x) all proceeds of the foregoing; and

(b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the "**Collateral**".

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

**2.02 Recording, Etc.**

(a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.

(b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.

(c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:

(i) grant the Security Interest more effectively in all or any portion of the Collateral;

(ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;

(iv) enforce the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

(vi) pay all Taxes levied or assessed upon the Collateral when due.

(d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.

(e) Without limiting the generality of subsection 2.02(c) or (d):

(i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.

(ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

**2.03 Use of Collateral**

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

**2.04 Suits To Protect the Collateral**

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

**2.05 Purchaser Protected**

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

**2.06 Powers Exercisable by Receiver or Indenture Trustee**

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

**2.07 Determinations Relating to Collateral**

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05). The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

**2.08 Satisfaction and Discharge of Indenture**

(a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any Series, Class or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every Series, Class or Tranche of Notes as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.

(b) This Indenture will cease to be of further effect with respect to any Series, Class or Tranche of Notes (except as to any surviving rights of transfer or exchange of Notes of that Series, Class or Tranche expressly provided for herein or in the form of Note for that Series, Class or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that Series, Class or Tranche, when:

(i) all Notes of that Series, Class or Tranche theretofore authenticated and delivered (other than (A) Notes of that Series, Class or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 16.04(b), and (B) Notes of that Series, Class or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section 16.04(b)) have been delivered to the Indenture Trustee canceled or for cancellation;

(ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the Notes of that Series, Class or Tranche; and

(iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that Series, Class or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Series, Class or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that Series, Class or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections 7.07 and 16.04(b) will survive such satisfaction and discharge.

**2.09 Release of all Collateral**

(a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.

(b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.

(c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

**2.10 Certain Commercial Law Representations and Warranties**

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

(a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other

documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

(b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).

(c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.

(d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

## ARTICLE III
## NOTE FORMS

### 3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any Series, Class or Tranche, to the rules of any securities exchange on which such Notes are listed.

### 3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be

evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

### 3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the Series, Class or Tranche designated therein referred to in the within-mentioned Indenture.

**[INDENTURE TRUSTEE]**, as Indenture Trustee,

By: _____

Authorized Signatory

Dated: _____

### 3.04 Notes Issuable in the Form of a Global Note

(a) If the Issuer establishes pursuant to Sections 3.02 and 4.01 that the Notes of a particular Series, Class or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such Series, Class or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to [Fair Hydro Trust] (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of

CDS Clearing and Depository Services Inc. ("**CDS**"), to [Fair Hydro Trust] (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note", and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

(b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.

(c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:

(i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such Series, Class or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such Series, Class or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such Series, Class or Tranche of like tenor and terms in an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.

(ii) The Issuer may at any time and in its sole discretion determine that the Notes of any Series, Class or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by

such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such Series, Class or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such Series, Class or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such Series, Class or Tranche or portion thereof in exchange for such Global Note or Notes.

(iii) If any Event of Default has occurred and is continuing with respect to such Global Notes, and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of that Series advise the Indenture Trustee and the Depository that a Global Note is no longer in the best interest of the Noteholders of that Series, the holders of Global Notes of that Series may exchange such Notes for individual Notes.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

**3.05 Temporary Global Notes and Permanent Global Notes**

(a) If specified in the Related Supplemental Indenture for any Tranche, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the "**Temporary Global Note**"), without interest coupons, in the denomination of the entire aggregate principal amount of such Series, Class or Tranche and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the "**Permanent Global Notes**").

(b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for

beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series, Class or Tranche, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series, Class or Tranche of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

(c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.

(d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such

Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

**3.06 Beneficial Ownership of Global Notes**

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

(a) the Issuer and the Indenture Trustee may deal with the applicable clearing agency or Depository and the clearing agency's or Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and

(b) the rights of the respective Note Owners will be exercised only through the applicable clearing agency or Depository and the clearing agency's or Depository's participants and will be limited to those established by applicable law and agreements between such Note Owners and the clearing agency or Depository and/or the clearing agency's or Depository's participants. Pursuant to the operating rules of the applicable clearing agency, unless and until Notes in definitive form are issued pursuant to Section 3.04, the clearing agency or the Depository will make book-entry transfers among the clearing agency's or the Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such clearing agency's or Depository's participants.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the clearing agency and the clearing agency's participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes.

**3.07 Notices to Depository**

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

**3.08 CUSIP Numbers**

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide

the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

## ARTICLE IV
## THE NOTES

### 4.01 General Title, General Limitations, Issuable in Series, Terms of a Series, Class or Tranche of Notes

(a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.

(b) The Notes may be issued in one or more Series, Classes or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.

(c) Each Note issued must be part of a Series, Class and Tranche of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A Class or Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.

(d) Each Series of Notes may, but need not be, subdivided into multiple Classes. Notes belonging to a Class in any Series may be entitled to specified payment priorities over other Classes of Notes in that Series.

(e) Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If a Series of Notes is subdivided into multiple Classes, the Notes of each Class of such Series shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Class of Notes belong to different Tranches, all Notes of such Class, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the Class of Notes.

(f) Notes of a Series that belong to different Classes in that Series belong to different Tranches on the basis of the difference in Class membership.

(g) Each Class of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single Class of a Series will belong to different Tranches if they have different terms and conditions. With respect to any Class of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.

(h) Before the initial issuance of Notes of each Series, Class or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

(i) the Series designation;

(ii) the Stated Principal Amount of the Notes;

(iii) whether such Notes are of a particular Class of Notes or a Tranche of a Class of Notes;

(iv) the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;

(v) if the principal of or interest, if any, on such Notes are to be payable, at the election of the Issuer or a Noteholder, in a currency or currencies other than that in which the Notes are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

(vi) if the amount of payments of principal of or interest, if any, on such Notes may be determined with reference to an index based on (A) a currency or currencies other than that in which the Notes are stated to be payable, (B) changes in the prices of one or more other securities or indexes of securities or (C) changes in the prices of one or more commodities or indexes of commodities, or any combination of the foregoing, the manner in which such amounts will be determined;

(vii) the price or prices at which such Series, Class or Tranche of Notes will be issued;

(viii) the times at which such Series, Class or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;[2]

(ix) the rate per annum at which such Series, Class or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;

(x) each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series, Class or Tranche of Notes;

(xi) the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific

[2] To confirm whether optional or mandatory redemption is possible. If not, a specific provision prohibiting it will be included.

Dollar Principal Amount, as applicable, of such Series, Class or Tranche of Notes;

(xii) whether or not application will be made to list such Series, Class or Tranche of Notes on any securities exchange;

(xiii) any Events of Default with respect to such Series, Class or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series, Class or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series, Class or Tranche);

(xiv) if such Series, Class or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;

(xv) if such Series, Class or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series, Class or Tranche of Notes are to be issued with or without coupons or both;

(xvi) the subordination of such Series, Class or Tranche of Notes to any other indebtedness of the Issuer, including without limitation, the Notes of any other Series, Class or Tranche;

(xvii) if such Series, Class or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;

(xviii) if such Series, Class or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;

(xix) the Record Date for any Payment Date of such Series, Class or Tranche of Notes, if different from the last day of the month before the related Payment Date;

(xx) the details of any accumulation period for such Series, Class or Tranche of Notes and the amount scheduled to be deposited in a Capital Reserve Account, if any, on each Payment Date during such accumulation period;

(xxi) whether and under what conditions, additional amounts will be payable to Noteholders of such Series, Class or Tranche; and

(xxii) any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

(i) The Notes of each Series, Class or Tranche will be distinguished from the Notes of each other Series, Class or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.

(j) Any terms or provisions in respect of the Notes of any Series, Class or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

**4.02 Denominations**

The Notes of each Series, Class or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series, Class or Tranche, the Registered Notes of that Series, Class or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series, Class or Tranche, the Bearer Notes of that Series, Class or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

**4.03 Execution, Authentication and Delivery and Dating**

(a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.

(b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.

(d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series, Class or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

(e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.

(f) Unless otherwise provided in the form of Note for any Series, Class or Tranche, all Notes will be dated the date of their authentication.

(g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

**4.04 Temporary Notes**

(a) Pending the preparation of definitive Notes of any Series, Class or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.

(b) If temporary Notes of any Series, Class or Tranche are issued, the Issuer will cause definitive Notes of such Series, Class or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series, Class or Tranche will be exchangeable for definitive Notes of such Series, Class or Tranche upon surrender of the temporary Notes of such Series, Class or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series, Class or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series, Class or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series, Class or Tranche.

**4.05 Registration, Transfer and Exchange**

(a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of Registered Notes of a particular Series, Class or Tranche, and for transfers of Registered Notes or of Registered Notes of such Series, Class or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information

contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

(b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any Series, Class or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such Series, Class or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.

(c) Subject to Section 3.04, at the option of the Noteholder, Notes of any Series, Class or Tranche may be exchanged for other Notes of such Series, Class or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same Series, Class and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.

(d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.

(f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum

sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

(g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any Series, Class or Tranche during a period beginning at the opening of business 15 days before the day of selection of Notes of such Series, Class or Tranche to be redeemed and ending at the close of business on (A) if Notes of such Series, Class or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such Series, Class or Tranche so selected for redemption or (B) if Notes of the Series, Class or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the Series, Class or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.

(h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.

(i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.

(j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any Series, Class or Tranche of Notes issued under this Indenture.

(k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES**

**ACT**"), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or

non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code ("**Similar Law**"); or (ii) (A) the Note is rated at least "BBB-" or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

**4.06 Mutilated, Destroyed, Lost and Stolen Notes**

(a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, Series, Class or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same Series, Class or Tranche duly issued hereunder.

(e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**4.07 Persons Entitled to Payment**

(a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).

(b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.

(c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.

(d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.

(e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.

(f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

(g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so) to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors

pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

**4.08 Cancellation**

All Notes surrendered for payment, redemption, transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

**4.09 Protection of Notes**

(a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.

(b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

**4.10 New Issuances of Notes**

(a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding Class or Tranche of a Series of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding Class or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that Class or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a Class or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a Class or Tranche of Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit of the additional Notes. Furthermore, the targeted

deposits, if any, to any applicable Issuer Account, will be increased proportionately to reflect the principal amount of the additional Notes.

(b) When issued, the additional Notes of a Class or Tranche will be identical in all respects to the other Outstanding Notes of that Class or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related Supplemental Indenture as the other Outstanding Notes of that Class or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

## ARTICLE V
## CONDITIONS PRECEDENT

### 5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:

(i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;

(iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;

(v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;

(d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;

(e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable Class or Tranche of Notes;

(f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;

(g) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;

(h) in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;

(i) in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code), then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and

(j) in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

**5.02 No Consent**

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

### 5.03 Conditions Precedent for the Incurrence of other Obligations Secured

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and

(b) each counterparty to such agreement (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

### 5.04 Acknowledgements

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

## ARTICLE VI
## SUBORDINATION

### 6.01 Subordination

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to

Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

**6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations**

(a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.

(b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

**6.03 Rights of Specified Creditors Preserved**

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

### 6.04 Renewal or Extension of Senior Funding Obligations

(a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.

(b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

## ARTICLE VII
## ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

### 7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

### 7.02 Issuer Accounts

(a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Collection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall

transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the "Collection Account".

(b) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Refinancing Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the "Refinancing Account"

(c) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Capital Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors at such time shall be credited to a Capital Reserve Account, to the extent that there is a requirement for funds in such Capital Reserve Account, in accordance with the terms of any applicable Funding Obligation Agreement and Section 7.04. Each Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Capital Reserve Account. From the date

each such new Capital Reserve Account is established, it shall be a "Capital Reserve Account".

(d) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Finance Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for one or more Series or Classes of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Finance Reserve Account, to the extent that there is a requirement for funds in such Finance Reserve Account, in accordance with the terms of any applicable Funding Obligation Agreement and Section 7.04. Each Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Finance Reserve Account. From the date each such new Finance Reserve Account is established, it shall be a "Finance Reserve Account".

(e) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause the Indenture Trustee to establish one or more Eligible Deposit Accounts denominated as "**Supplemental Reserve Accounts**" in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Supplemental Reserve Account may be established for such other purposes not prohibited by this Indenture as the Issuer may deem necessary or desirable from time to time. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Supplemental Reserve Account, to the extent that there is a requirement for funds in such Supplemental Reserve Account, in accordance with the terms of the any applicable Funding Obligation Agreement and Section 7.04. Each Supplemental Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Supplemental Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to

exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Supplemental Reserve Account, as applicable, that is an Eligible Deposit Account and shall transfer any funds or other property from such Supplemental Reserve Account to such new Supplemental Reserve Account. From the date each such new Supplemental Reserve Account is established, it shall be a "Supplemental Reserve Account".

**7.03 Investment of Funds in the Issuer Accounts**

(a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.

(b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.

(c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.

(d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections 7.04 and 7.05.

(e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.

(f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided,

however, that such funds shall remain uninvested upon the occurrence of any of the following events:

(i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or

(ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

**7.04 Allocation of Amounts on Deposit in the Collection Account**

(a) All Senior Funding Obligations of each Series, Class or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series, Class or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series, Class or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Junior Subordinated Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement.

(b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).

(c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

(d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.

(e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:

(i) First, (A) to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; and then (B) to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[3] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(ii) Second, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(iii) Third, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account in accordance with the terms of any Related Funding Obligation Agreement, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(iv) Fourth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any other Issuer Account as required by any Related Funding Obligation Agreement, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;

(v) Fifth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

[3] To be confirmed.

(vi) Sixth, to the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (i);

(vii) Seventh, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;

(viii) Eighth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

(ix) Ninth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;

(x) Tenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;

(xi) Eleventh, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

(xii) Twelfth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Junior Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;

(xiii) Thirteenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Junior Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;

(xiv) Fourteenth, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(xv) Fifteenth, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than $100 in any Monthly Period; and

(xvi) Sixteenth, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

**7.05 Allocation of Amounts on Deposit in the Other Issuer Accounts**

(a) Subject to clause (b) below, if, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date: (i) amounts on deposit in any Issuer Account, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations, may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (iii); (ii) amounts on deposit in any Issuer Account related solely to Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (ix); and (iii) amounts on deposit in any Issuer Account related solely to Junior Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (xii).

(b) Notwithstanding anything to the contrary contained herein but subject to Section 8.13:

(i) amounts on deposit in the Refinancing Account may only be withdrawn from the Refinancing Account for the purpose of repaying the principal amount of Issuer Funding Obligations which are due and payable and interest thereon; and

(ii) amounts on deposit in an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations may only be withdrawn from such Issuer Account for the purpose for which such Issuer Account was established and allocated only to those Specified Creditors for whom such Issuer Account was established.

### 7.06 Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

### 7.07 Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

## ARTICLE VIII
## EVENTS OF DEFAULT AND REMEDIES[4]

### 8.01 Events of Default

"**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of 65 days following the date on which such interest became due and payable;

(b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;

(c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of 90 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of

[4] Subject to ongoing discussions.

all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 90-day period;

(d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of 90 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 90-day period;

(e) an Insolvency Event in respect of the Issuer;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within 90 days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;

(g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or

(h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

**8.02 <u>Acceleration of Maturity; Rescission and Annulment</u>**

(a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not

less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

(b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will automatically and immediately be obligated to pay off the Issuer Funding Obligations.

(c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and

(ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.

(d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as

though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

(e) No such rescission will affect any subsequent default or impair any right consequent thereon.

**8.03 Waiver of Past Defaults**

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

**8.04 Notice of Defaults**

(a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:

(i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;

(ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;

(iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and

(iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

(b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

**8.05 Remedies Generally**

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

**8.06 Default Interest and Expenses**

The Issuer covenants that if:

(a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or

(b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial

proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

**8.07 Indenture Trustee May File Proofs of Claim**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and

(b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

**8.08 Indenture Trustee May Enforce Claims Without Possession of Notes**

All rights of action and claims under this Indenture or the Notes of any Series, Class or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such Series, Class or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

**8.09 Indenture Trustee May Elect to Hold the Collateral**

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

**8.10 Termination by Indenture Trustee of Manager and Servicer**

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

**8.11 Control by Debtholders**

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

(a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and

(b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

**8.12 Limitation on Suits**

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

(a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;

(c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably

satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

## 8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

(a) First, to (A) the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; and then to (B) the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[5] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(b) [Second, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;

(c) Third, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;][6]

(d) Fourth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

[5] To be confirmed.

[6] Subject to ongoing discussion.

(e) Fifth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(f) Sixth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

(g) Seventh, to the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (a);

(h) Eighth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;

(i) Ninth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

(j) Tenth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;

(k) Eleventh, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

(l) Twelfth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;

(m) Thirteenth, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party; and

(n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations (which, for greater certainty, shall not include the Refinancing Account) shall first be used to satisfy all

obligations owing to those Specified Creditors for whom such Issuer Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

**8.14 Limited Recourse**

(a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.

(b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).

(c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

**8.15 Restoration of Rights and Remedies**

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

**8.16 Rights and Remedies Cumulative**

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or

otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**8.17 Delay or Omission Not Waiver**

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

**8.18 Waiver of Stay or Extension Laws**

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**8.19 Indenture Trustee Appointed Attorney**

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

(a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;

(b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and

(c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

**8.20 Disclaimer of Marshalling**

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

## ARTICLE IX
## THE INDENTURE TRUSTEE

**9.01 Certain Duties and Responsibilities**

(a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);

(ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary

Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

(iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

**9.02 Certain Rights of Indenture Trustee**

Except as otherwise provided in Section 9.01:

(a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the

Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;

(h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;

(j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;

(l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the

security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

(m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

**9.03 Not Responsible for Recitals or Issuer Funding Obligations**

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

**9.04 May Hold Notes**

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

**9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity**

(a) The Issuer agrees:

(i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as [Indenture Trustee] is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and

(iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted

by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

(b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

**9.06 Corporate Indenture Trustee Required; Eligibility**

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

**9.07 Resignation and Removal; Appointment of Successor**

(a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.

(b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(d) If at any time:

(i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

(ii) the Indenture Trustee becomes incapable of acting, or

(iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

(f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.

(h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

**9.08 Acceptance of Appointment by Successor**

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

**9.09 Merger, Conversion, Consolidation or Succession to Business**

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

## 9.10 Trust Indenture Legislation

(a) In this Article IX, the term "**applicable legislation**" means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.

(b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.

(c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

## 9.11 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;

(c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

## 9.12 Indenture Trustee's Application for Instructions from the Issuer

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any

action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

### 9.13 Appointment of Co-Trustee or Separate Indenture Trustee

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Issuer's property may at the time be located, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.

(b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

**9.14 Preservation of Information; Communications to Debtholders**

(a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).

(b) If three or more Debtholders of any Series, Class or Tranche (hereinafter referred to as "**applicants**") (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such Series, Class or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or

(ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable Series, Classes and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

(c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

## 9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

## 9.16 Paying Agent

(a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection

Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

(b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.

(c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:

(i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;

(ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;

(iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;

(v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and

(vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on

any amounts contemplated under this Indenture of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

## ARTICLE X
## MEETINGS

### 10.01 Conduct of Meetings

Meetings of Debtholders of any Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

(a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, convene a meeting of the Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.

(b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the Series, Class or Tranche to which such meeting relates, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, and to the Issuer, unless the meeting has been called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary

to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

(c) At any meeting of the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, then and there represented in person or by proxy and entitled to vote at such meeting.

(d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.

(e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall

be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

**10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution**

(a) In addition to any powers hereinbefore given, Debtholders of a Series, Class or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:

(i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such Series, Class or Tranche or by the Related Funding Obligation Agreement;

(ii) sanction, insofar as they apply to the Series, Class or Tranche, the release of the Issuer from its covenants and obligations hereunder;

(iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such Series, Class or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such Series, Class or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;

(iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the Series, Class or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized by such Ordinary Resolution; provided that no such assent shall be necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

(v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a Series, Class or Tranche of Issuer Funding Obligations.

(b) In addition to any powers hereinbefore given, Debtholders of all Controlling Class Obligations shall by Extraordinary Resolution have the power to:

(i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

(ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;

(iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;

(iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

(v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

(vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all Series of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;

(vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations,

to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

(viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and

(x) permit the creation of any Lien on the Collateral that is prior to the Security Interest (other than Permitted Liens).

(c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

**10.03 Extraordinary Resolution**

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

**10.04 Declaration by Chairman of Result of Vote**

At any meeting of the Debtholders of any Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

**10.05 Minutes**

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

**10.06 Signed Instruments**

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

**10.07 Persons Who May Attend**

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

**10.08 Binding Effect of Resolutions**

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a Series, Class or Tranche, of all

Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, will be binding upon all of the Debtholders of such Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

### 10.09 Notes Regarded as Not Outstanding for Certain Purposes

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular Series, Class or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that Series, Class or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that Series, Class or Tranche.

## ARTICLE XI
## SUPPLEMENTAL INDENTURES

### 11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or

(b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all Series, Class or Tranche of Issuer Funding Obligations; or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(d) to provide for the issuance of any Series, Class or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Series, Class or Tranche; or

(e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or

(f) to add any additional Events of Default in respect of any or all Series, Class or Tranche of Issuer Funding Obligations; or

(g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or

(h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or

(i) to provide for additional or alternative forms of Credit Enhancement for any Series, Class or Tranche of Issuer Funding Obligations; or

(j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or

(k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or

(l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture

Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

**11.02 Supplemental Indentures and Amendments with Consent of Debtholders**

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each Series, Class or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such Series, Class or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

(a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;

(b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the Adjusted Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

(c) reduce the amount of a Discount Note payable upon its acceleration;

(d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any Series, Class or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;

(e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;

(f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or

(g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Series, Class or Tranche of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such Series with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other Series, Class or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

### 11.03 Execution of Amendments and Supplemental Indentures

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section 9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

### 11.04 Effect of Amendments and Supplemental Indentures

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each Series, Class or Tranche of Issuer Funding Obligations

affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

### 11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

## ARTICLE XII
## REPRESENTATIONS AND WARRANTIES OF THE ISSUER

### 12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular Series, Class or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

(a) The Issuer is a Financing Entity.

(b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.

(c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.

(d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in

effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.

(f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.

(g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.

(h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in

connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

## ARTICLE XIII
## COVENANTS OF THE ISSUER

### 13.01 Payment of Principal and Interest

With respect to each Series, Class or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

### 13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the Refinancing of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

### 13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more Series, Classes or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any Series, Class or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints

the **[■]**[7], as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

**13.04 Legal Existence**

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

**13.05 Separateness Covenants**

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

(a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);

(b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;

(c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;

(e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;

(f) [prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;][8]

(g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;

(h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

[7] OPG to confirm.

[8] To discuss financial statement requirements.

(i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;

(j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and

(k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

**13.06 Compliance with Laws**

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

**13.07 Performance of Obligations**

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.

(b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.

(c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

**13.08 Funding Obligations**

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

**13.09 Financial Statements**

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited **[consolidated financial statements of the Issuer]** for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, **[unaudited consolidated financial statements of the Issuer]** for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.[9]

**13.10 Statement as to Compliance**

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

(a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and

(b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year, or, if there has been a material default in the fulfillment of any such condition or covenant (without regard to any grace period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

**13.11 Payment Instruction**

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

**13.12 Notice of Events of Default**

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

[9] To discuss financial statement requirements.

**13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors**

(a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:

(i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such Series, Classes or Tranches as of such date, and

(ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.

(b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

**13.14 Other Positive Covenants**

The Issuer will:

(a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;

(b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;

(c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-

renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

(d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

**13.15 Rule 144A Information**

For so long as Notes of any Series, Class or Tranche are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to provide to any Noteholder of such Series, Class or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

**13.16 Further Instruments and Acts**

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

**13.17 No Other Business**

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

**13.18 Amendments to Program Agreements**

(a) The Issuer will not:

(i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or

(ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.

(b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

**13.19 Issuer May Consolidate, Etc., Only on Certain Terms**

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a "**transaction**"), unless:

(a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;

(b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

(c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;

(d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and

(e) any action that is necessary to maintain the Security Interest shall have been taken.

**13.20 Successor Substituted**

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

**13.21 Guarantees, Loans, Advances and Other Liabilities**

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

**13.22 Capital Expenditures**

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

**13.23 Restricted Payments**

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if

the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

**13.24 No Borrowing**

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

**13.25 Other Negative Covenants**

The Issuer will not:

(a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);

(b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;

(c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;

(e) release any security or guarantee in respect of the Collateral;

(f) voluntarily dissolve or liquidate; or

(g) take any action that would cause it to be treated as engaged in a "trade or business within the United States" within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

**13.26 Indenture Trustee May Perform Covenants**

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with

money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

## ARTICLE XIV
## MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

### 14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

### 14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

## ARTICLE XV
## NOTICES

### 15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

**[Issuer]**
c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

**[Issuer Trustee]**, in its capacity as Issuer Trustee for **[Issuer]**
**[Address]**
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

### 15.02 Notice to the Indenture Trustee

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

**[Indenture Trustee]**
**[Address]**

Attention: [■]
Fax: [■]

**15.03 Notice to Noteholders**

(a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.

(b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any Series, Class or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.

(c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.

(d) With respect to any Series, Class or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series, Class or Tranche.

(e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

### 15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

### 15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

### 15.06 Change of Address

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

## ARTICLE XVI
## MISCELLANEOUS

### 16.01 No Petition

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

**16.02 U.S. Tax Treatment**

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

**16.03 Alternate Payment Provisions**

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

**16.04 Final Distribution**

(a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any Series, Class or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such Series, Class or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such Series, Class or Tranche specifying (i) the date upon which final payment of such Series, Class or Tranche will be made upon presentation and surrender of Notes of such Series, Class or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.

(b) Notwithstanding a final distribution to the Noteholders of any Series, Class or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any Issuer Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final

distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any Issuer Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

**16.05 Force Majeure**

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**16.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Indenture.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

**[ISSUER]**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

**[INDENTURE TRUSTEE]**, as Indenture Trustee and not in its individual capacity

By: _____

Name:
Title:

**Schedule A**
**DEFINED TERMS**

"**Act**" means *Ontario Fair Hydro Act, 2017*.

"**Action**" has the meaning specified in Section 1.04.

"**Adjusted Outstanding Dollar Principal Amount**" means, at any time with respect to any Series, Class or Tranche of Notes, the Outstanding Dollar Principal Amount of all Outstanding Notes of such Series, Class or Tranche at such time, less any funds on deposit in any Issuer Account or the related Sub-Account, as applicable, for the benefit of such Series, Class or Tranche at such time.

"**Adverse Effect**" means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default, (b) materially adversely affect the amount or timing of payments to be made to the Specified Creditors pursuant to this Indenture or any Program Agreement, or (c) adversely affect the Security Interest unless otherwise permitted by this Indenture.

"**Affected Party**" has the meaning specified in the applicable Derivative Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

"**Authorized Newspaper**" means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any Series, Class or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

"**Available Collections**" means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section **[3.3]** of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in the Collection Account, any Finance Reserve Account and any Capital Reserve Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; and (b) the IESO Carrying Cost Payments.

"**Bearer Note**" means a Note in bearer form.

"**Benefit Plan**" means an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a "plan" described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" by reason of an employee benefit plan's investment in the entity.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

"**Business Day**" means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by applicable law, regulation or executive order to be closed, or (b) for purposes of any particular Series, Class or Tranche of Notes, any other day specified in the applicable Supplemental Indenture.

"**Canadian Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes of any Tranche issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

"**Capital Reserve Account**" has the meaning specified in subsection 7.02(c).

"**Certificate of Authentication**" means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

"**Chairman**" has the meaning specified in subsection 10.01(d).

"**Change of Law Protection Agreement**" means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

"**Class**" means, with respect to any Issuer Funding Obligation, the class specified in the Related Funding Obligation Agreement.

"**Closing Date**", with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

"**Collateral**" has the meaning specified in Section 2.01.

"**Collection Account**" has the meaning specified in subsection 7.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Controlling Class Obligations** means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such

time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at [■]; Telephone: [■]; Facsimile: [■], or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

"**Credit Enhancement**" means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as "Credit Enhancement" for purposes hereof.

"**Credit Enhancement Agreement**" means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

"**Credit Enhancer**" means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

"**DBRS**" means DBRS Limited, or any successor thereof.

"**Debtholder**" means a Noteholder or a Lender.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Issuer was established.

"**Defaulting Party**" has the meaning specified in the applicable Derivative Agreement.

"**Depository**" means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

"**Derivative Counterparty**" means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, Derivative Agreements.

"**Discount Note**" means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

"**Dollar**," "**$**" or "**Cdn. $**" means Canadian dollars.

"**Electronic Methods**" means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

"**Eligible Deposit Account**" means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's and, if DBRS provides a rating thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody's, S&P and DBRS, if rated by DBRS;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this definition as a "broker/dealer"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A1" from Moody's and also has a long-term unsecured debt rating of at least "A" from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's; and (3) no securities or investments described in clauses (b) through (d) above that have

maturities of more than 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's.

"**ERISA**" means the *Employee Retirement Income Security Act* of 1974, as amended.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Date**" means, with respect to any Series, Class or Tranche of Notes, the latest of:

(a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;

(b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and

(c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

"**Extraordinary Resolution**" means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Indenture.

"**Finance Reserve Account**" has the meaning specified in subsection 7.02(d).

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act as of the date of this Indenture.

"**Financing Plan**" has the meaning ascribed to the term "financing plan" in the Act as of the date of this Indenture.

"**Foreign Currency**" means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

"**Foreign Currency Note**" means a Note denominated in a Foreign Currency.

"**Foreign Depository**" means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

"**Funding Obligation Agreement**" means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

"**Funding Obligations**" has the meaning ascribed to the term "funding obligations" in the Act as of the date of this Indenture.

"**Global Note**" means any Note issued pursuant to Section 3.04.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

"**IESO Carrying Cost Payments**" means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Indenture**" or "**this Indenture**" means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" means and includes such Person.

"**Initial Currency Specific Dollar Principal Amount**" means with respect to a Class or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

"**Initial Dollar Principal Amount**" means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a Series, Class or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such Series, Class or Tranche plus the aggregate initial principal amount of any additional Notes of such Series, Class or Tranche, and (b) with respect to a Series, Class or Tranche of Discount Notes or that includes Foreign Currency Notes,

the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

"**Internal Revenue Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act as of the date of this Indenture.

"**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Indenture.

"**Issuer**" has the meaning specified in the first paragraph of this Indenture.

"**Issuer Accounts**" means, collectively, the Collection Account, the Refinancing Account, all Finance Reserve Accounts, all Capital Reserve Accounts and all Supplemental Reserve Accounts, including any Sub-Accounts thereof.

"**Issuer Certificate**" means a certificate (including an Officer's Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series, Class or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

"**Issuer Funding Obligations**" means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and,

upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time.

"**Junior Subordinated Borrowings**" means Borrowings that have been designated as "Junior Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

"**Junior Subordinated Notes**" means Notes of a Series or Class that have been designated as "Junior Subordinated Notes" in the Related Supplemental Indenture.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

"**Liquidity Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a "Liquidity Agreement" for the purposes hereof.

"**Loan Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Issuer.

"**Manager**" means OPG, in its capacity as manager of the Issuer under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Monthly Period**" means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial

Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

"**Moody's**" means Moody's Investors Service, Inc., or any successor thereof.

"**Non-resident**" means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

"**Note**" or "**Notes**" means any note or notes of any Series, Class or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

"**Noteholder**" means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

"**Note Owner**" means the beneficial owner of an interest in a Global Note.

"**Note Purchase Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

"**Note Register**" has the meaning specified in subsection 4.05(a).

"**Note Registrar**" means the Person who keeps the Note Register.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust).

"**Officer's Certificate**" means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer's knowledge and belief.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Opinion of Counsel**" means one or more written opinions of counsel, who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel, which counsel shall be reasonably acceptable to the party

receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party.

"**Ordinary Resolution**" has the meaning specified in subsection 10.01(e).

"**Outstanding**" means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;

(b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and

(c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to "Notes" will be deemed to be references to "Outstanding Notes". In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee's right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

"**Outstanding Currency Specific Dollar Principal Amount**" means at any time, with respect to any Class or Tranche of Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such Class or Tranche at such time, less the amount of any withdrawals from any Issuer Account or Sub-Account for such Class or Tranche of Notes for payment of principal to the holders of such Class or Tranche of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such Class or Tranche of Notes due to the issuance of additional Notes of such Class or Tranche pursuant to Article V.

"**Outstanding Dollar Principal Amount**" means at any time:

(a) in respect of Notes, either:

(i) with respect to any Series, Class or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such Series, Class or Tranche at such time, less the amount of any withdrawals from any Issuer Account or Sub-Account for such Series, Class or Tranche of Notes for payment of principal to the holders of such Series, Class or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or

(ii) with respect to any Series, Class or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series, Class or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series, Class or Tranche or the applicable Derivative Counterparty and accretions of principal, each pursuant to the Related Supplemental Indenture;

plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such Series, Class or Tranche of Notes due to the issuance of additional Notes of such Series, Class or Tranche pursuant to Article V; and

(b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

"**Payment Date**" means, with respect to any Series of Issuer Funding Obligations, the 15$^{th}$ day of each calendar month or the date otherwise specified in the Related Funding Obligation Agreement.

"**Payment Instruction**" means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

"**Permanent Global Note**" has the meaning specified in subsection 3.05(a).

"**Permitted Liens**" means:

(a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;

(b) the Lien of any Indenture Trustee, as provided in Section 9.05; and

(c) the Security Interest.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Place of Payment**" means, with respect to any Series, Class or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such Series, Class or Tranche of Notes in accordance with the provisions of Article V.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario).

"**Predecessor Notes**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Principal Payment Due Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Program Agreements**" means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

"**Province**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

"**Rating Agency**" means, with respect to any Outstanding Series, Class or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

"**Rating Agency Condition**" means, unless otherwise specified in the Related Supplemental Indenture for any Series, Class or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any Outstanding Notes immediately before the taking of such action, or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer

in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

"**Record Date**" means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Indenture.

"**Refinancing Account**" has the meaning specified in subsection 7.02(b).

"**Registered Note**" means a Note issued in registered form.

"**Registered Noteholder**" means a Noteholder of a Registered Note.

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"**Related**" is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

(a) "Credit Enhancement Agreement": a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;

(b) "Funding Obligation Agreements": the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;

(c) "Liquidity Agreement": a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a Class or Tranche of such Issuer Funding Obligations constituting Notes;

(d) "Loan Agreement": a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and

(e) "Supplemental Indenture": a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) the Indenture Trustee, any officer within the Corporate Trust Office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

"**Securities Exchange Act**" means the United States Securities Exchange Act of 1934, as amended from time to time.

"**Security Interest**" means the Lien granted pursuant to Section 2.01.

"**Senior Borrowings**" means Borrowings that have been designated as "Senior Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Senior Funding Obligations**" means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

"**Senior Notes**" means Notes of a Series or Class that have been designated as "Senior Notes" in the Related Supplemental Indenture.

"**Series**" means, with respect to any Issuer Funding Obligation, the Series specified in the Related Funding Obligation Agreement.

"**Servicer**" has the meaning specified in the Master Transfer and Servicing Agreement.

"**Servicer Default**" has the meaning ascribed thereto in Section **[7.1]** of the Master Transfer and Servicing Agreement.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

"**Stated Principal Amount**," has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

"**Sub-Account**" means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

"**Subordinated Borrowings**" means Borrowings that have been designated as "Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

"**Subordinated Notes**" means Notes of a Series or Class that have been designated as "Subordinated Notes" in the Related Supplemental Indenture.

"**Supplemental Indenture**" means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any Classes and Tranches of Notes belonging to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

"**Supplemental Reserve Account**" means the trust account or accounts designated as such and established pursuant to subsection 7.02(e).

"**Tax**" has the meaning ascribed to the term "tax" in the regulations promulgated under the Act [as of the date of this Indenture.].

"**Temporary Global Note**" has the meaning specified in Section 3.05(a).

"**Termination Payment**" has the meaning specified in the applicable Derivative Agreement.

"**Terms Document**" means, with respect to any Class or Tranche of Notes, a supplement to the Related Supplemental Indenture.

"**Tranche**" means, with respect to any Class of Notes, Notes of such Class which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Underwriting Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

"**United States Person**" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**U.S. Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes of any Tranche issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

"**U.S. Securities Act**" means the United States Securities Act of 1933, as amended from time to time.

"**Warehouse Facility Agreement**" means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

**EXHIBIT 1**
**FORM OF PAYMENT INSTRUCTIONS**

See Attached.

# ISDA®

International Swaps Dealers Association, Inc.

# SCHEDULE
# to the
# 1992 Master Agreement

dated as of **[■]**, 2017

between

**[HEDGE PROVIDER]**
("**Party A**"),

and

**[ISSUER]**
**("Party B")**

Part 1 **Termination Provisions.**

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of:

Section 5(a)(v), Not Applicable

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v), Not Applicable,

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

(b) ***"Specified Transaction"*** will have the meaning specified in Section 14 of the Agreement.

(c) The ***"Breach of Agreement"*** provision of Section 5(a)(ii) will apply to Party A and will not apply to Party B.

(d) The ***"Credit Support Default"*** provisions of Section 5(a)(iii) will apply to Party A and will not apply to Party B.

(e) The ***"Misrepresentation"*** provisions of Section 5(a)(iv) will apply to Party A and will not apply to Party B.

(f) The ***"Default under Specified Transaction"*** provisions of Section 5(a)(v) will **[not]** apply to Party A and will not apply to Party B.

(g) The ***"Cross-Default"*** provisions of Section 5(a)(vi) will not apply to Party A and will not apply to Party B.

(h) The ***"Credit Event Upon Merger"*** provisions of Section 5(b)(iv) will not apply to Party A and will not apply to Party B.

(i) The ***"Automatic Early Termination"*** provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(j) ***Payments on Early Termination***. For the purpose of Section 6(e) of this Agreement:

(i) Market Quotation will apply.

(ii) The Second Method will apply.

(k) ***Payments on Early Termination Due to Certain Events***. Notwithstanding Section 6, if Party A is (A) the Affected Party for an Additional Termination Event or a Tax Event Upon Merger, or (B) the Defaulting Party for an Event of Default, paragraphs (i) to (v) below apply:

(i) The definition of ***"Market Quotation"*** is deleted and replaced with the following:

***"Market Quotation"*** means, for one or more Terminated Transactions, a Firm Offer which is:

(1) made by a Reference Market-maker that is an Eligible Replacement;

(2) for an amount that would be paid to Party B (expressed as a negative number) or by Party B (expressed as a positive number) in consideration of an agreement between Party B and the Reference Market-maker to enter into a Replacement Transaction; and

(3) made on the basis that Unpaid Amounts for the Terminated Transaction or group of Transactions are to be excluded but any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of any conditions precedent) after that Early Termination Date is to be included.

(ii) In determining whether or not a Firm Offer satisfies the condition in sub-paragraph (ii)(B) of the definition of "Replacement Transaction", Party B will act in a commercially reasonable manner.

(iii) The definition of ***"Settlement Amount"*** is deleted and replaced with the following:

***"Settlement Amount"*** means, for any Early Termination Date:

(a) if, on or prior to the Early Termination Date, a Market Quotation for a Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally

binding, the Termination Currency Equivalent of the amount (whether positive or negative) of the Market Quotation;

(b) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions has been accepted by Party B and is legally binding and one or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, the Termination Currency Equivalent of the amount (whether positive or negative) of the lowest of the Market Quotations (for the avoidance of doubt, (i) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number and (ii) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value); or

(c) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally binding and no Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B's Loss (whether positive or negative and without reference to any Unpaid amounts) for the relevant Terminated Transaction or group of Terminated Transactions.

(iv) At any time on or before the Early Termination Date at which two or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B must accept the lowest of the Market Quotations. For this purpose, (A) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number, and (B) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value.

(v) If Party B requests Party A in writing to obtain Market Quotations, Party A will use reasonable efforts to do so before the Early Termination Date.

(vi) For the purpose of determining Unpaid Amounts, any payment or delivery obligation which was (or would have been but for Section 2(a)(iii)) required to be performed pursuant to paragraph 2 of the Credit Support Annex shall be disregarded.

(l) ***"Termination Currency"*** shall mean Canadian dollars.

(m) ***Bankruptcy***

(i) Section 5(a)(vii)(2), (7) and (9) does not apply to Party B.

(ii) Section 5(a)(vii)(3) does not apply to Party B for any assignment, arrangement or composition effected by or under the Indenture Documents.

(iii) Section 5(a)(vii)(4) does not apply to Party B for a proceeding or petition instituted or presented by Party A or any of its Affiliates.

(iv) Section 5(a)(vii)(6) does not apply to Party B for (i) an appointment that is made under the Indenture Documents, or (ii) an appointment to which Party B is not subject.

(v) Section 5(a)(vii)(8) applies to Party B only if it applies to Section 5(a)(vii)(1), (3), (4), (5) and (6), as amended.

(n) ***Tax Event and Tax Event Upon Merger***

Section 5(b)(ii) applies but the words "(x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y)" are hereby deleted.

Section 5(b)(iii) applies but Party A will not be entitled to designate an Early Termination Date by reason of a Tax Event Upon Merger if it is the Affected Party.

Section 6(b)(ii) applies but the words "or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party" are deleted.

(o) ***Additional Termination Event*** will apply. The following shall constitute an Additional Termination Event:

(i) It shall be an Additional Termination Event and Party B shall be the sole Affected Party and all Transactions then outstanding shall be Affected Transactions if Party B fails to comply with the requirements of Part 5(o).

(ii) It shall be an Additional Termination Event and Party A shall be the sole Affected Party and all Transactions then outstanding shall be the Affected Transactions if Party A fails to comply with the requirements of Part 5(h).

(iii) It shall be an Additional Termination Event and Party B shall be the sole Affected Party upon an acceleration of the Series [■] Notes under Section **[8.02]** of the Trust Indenture.

(iv) **[NTD: consider including a partial termination provision to facilitate right-sizing interest rate hedges following any unscheduled reductions of the underlying financed amounts]**

Part 2 **Tax Representations. [NTD: subject to Tax review]**

(a) ***Payer Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B will make the following representations.

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

(i) Party A and Party B each make the following representation:

It is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada).*

(c) ***Other representations:*** None made.

Part 3 **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** |
|---|---|---|
| Each Party | Any document required or reasonably requested to allow the other party to make payments under the Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate. | Promptly upon reasonable demand by either party. |

(b) Other documents to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** | **Covered by Section 3(d) Representation** |
|---|---|---|---|
| Each Party | Evidence satisfactory in form and substance to the other party of (i) the authority of the signatory of the party to execute this Agreement **[and Credit Support Annex]** and any Confirmation and (ii) list of the names, true signatures of the signatory of this Agreement or any Confirmation. | Upon execution of this Agreement | Yes |
| Party A | A copy of unaudited financial statements for the most recently ended fiscal year. | As soon as reasonably practicable following a request by Party B to the extent not publically available online | No |
| Each Party | Legal opinion satisfactory to the other Party. | Upon execution of this Agreement | Yes |
| Party B | ISDA Cross-Border Swaps Representation Letter | If requested by Party A, upon execution and delivery of this Agreement. | No. |
| Party A and B | ISDA Canadian Representation Letter #1 | Upon execution and delivery of this Agreement. | No. |

Part 4 **Miscellaneous.**

(a) ***Addresses for Notices.*** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A: **[NTD: ■]**

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
Electronic Messaging System Details: ■
(Only with respect to transactions through this Office)

For any notices with respect to Section 5 and 6 of this Agreement for Party A:

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
E-mail: ■

Address for notices or communications to Party B:

[ISSUER]
c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario, M5J 2Y1

Attn: [■]
Fax: [■]
Email: [■]

with copies to:

[ISSUER TRUSTEE], in its capacity as Issuer Trustee for [ISSUER]

Attn: [■]
Fax: [■]
Email: [■]

Notwithstanding Section 12(a) of this Agreement, service of legal process documents relating to this Agreement may not be delivered by facsimile or by electronic messaging system.

(b) ***Process Agent***. For the purpose of Section 13(c) of this Agreement, neither party appoints a Process Agent.

(c) ***Offices***. The provisions of Section 10(a) will apply to this Agreement.

(d) ***Multibranch Party***. For the purpose of Section 10(c) of this Agreement:

Party A **[is][is not]** a Multibranch Party and may only enter into a Transaction through any of the following Offices:

Party B is not a Multibranch Party.

(e) ***Calculation Agent***. The Calculation Agent is Party A unless (i) otherwise specified in a Confirmation in relation to the relevant Transaction or (ii) a replacement Calculation Agent is designated by Party B as set

forth below. All calculations by the Calculation Agent shall be made in good faith and through the exercise of its commercially reasonable judgment. The calculations and determinations of the Calculation Agent shall (except in the case of manifest error) be final and binding upon all parties. Upon the failure of Party A to perform its obligations as Calculation Agent hereunder within five Local Business Days of Party A receiving from Party B notice of such failure, the sole remedy of Party B will be the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent. For so long as an Event of Default in respect of Party A is continuing, Party B will have the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent, without prejudice to any other remedy to which Party B is otherwise entitled under this Agreement. Upon Party A demonstrating its ability to resume performance of its obligations as Calculation Agent or such Event of Default no longer continuing, Party A may elect to resume its role as Calculation Agent.

(f) ***Credit Support Document***. Details of any Credit Support Document:

In relation to Party A: any Eligible Guarantee,

In relation to Party B: not applicable.

(g) ***Credit Support Provider***. Credit Support Provider means in relation to Party A, any Eligible Guarantor, and in relation to Party B; not applicable.

(h) ***Governing Law***. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to choice of law doctrine).

(i) ***Jurisdiction***. Section 13(b)(i) is hereby deleted and replaced by the following Section 13(b)(i):
"(i) submits to the exclusive jurisdiction of the Province of Ontario."

(j) ***Netting of Payments***. Subparagraph (ii) of Section 2(c) of this Agreement will not apply.

(k) ***"Affiliate"*** will have the meaning specified in Section 14 of this Agreement.

(l) ***Characterization under Program Agreements.*** The parties acknowledging and agree that:

(i) The Master Agreement and this Schedule constitute a "Derivative Agreement" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(ii) Party B is a "Derivative Counterparty" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(iii) Any payments required in connection with the Master Agreement and this Schedule will be "derivative payments" as defined under the Act.

Part 5 **Other Provisions.**

(a) ***Definitions***. Reference is hereby made to the 2006 ISDA Definitions (the "2006 Definitions") as published by the International Swaps and Derivatives Association, Inc. ("ISDA") or to any subsequent update being the then current version of the 2006 Definitions. Any terms used and not otherwise defined herein which are contained in the Definitions shall have the meaning set forth therein, and if not contained in the Definitions, will have the meanings specified in the Supplemental Indenture, either directly or by reference. If there is any inconsistency between this Agreement and the Definitions, this Agreement will govern. If there is inconsistency between a Confirmation and this Agreement or the Definitions, the Confirmation will govern.

For the purpose of this Agreement:

***"Act"*** means the *Ontario Fair Hydro Plan Act, 2017* together with any Regulations in effect thereunder from time to time.

***"DBRS"*** means DBRS Limited and its successors.

***"Eligible Guarantee"*** means an unconditional and irrevocable guarantee by a guarantor that is a principal debtor rather than surety and is directly enforceable by Party B, where either (i) a law firm has given a legal opinion confirming that none of the guarantor's payments to Party B under the guarantee will be subject to deduction or withholding for Tax, (ii) the guarantee provides that, if the guarantor's payments to Party B are subject to deduction or withholding for Tax, the guarantor is required to pay the additional amount necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required, or (iii) if any payment under the guarantee is made net of deduction or withholding for Tax, Party A is required under Section 2(a)(i) to make an additional payment necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required.

***"Eligible Replacement"*** means an entity (i)(A) having the Ratings Event I Required Ratings, or (B) whose obligations owing to Party B under this Agreement (or its replacement, as applicable) are guaranteed under an Eligible Guarantee by a guarantor having the Ratings Event I Required Ratings, and (ii) reasonably acceptable to Party B.

***"Firm Offer"*** means an offer which, when made, was capable of becoming legally binding upon acceptance.

***"Indenture Documents"*** means the Supplemental Indenture together with the Trust Indenture.

***"Local Business Day"*** means a day other than a Saturday, a Sunday or a day banking institutions or trust companies in Toronto, Ontario or Montreal, Quebec are authorized or obligated by law to close, and the definition of ***"Local Business Day"*** in Section 14 is deleted.

***"Moody's"*** means Moody's Investors Service, Inc. and its successors.

***"Relevant Entity"*** means Party A, a guarantor under an Eligible Guarantee or an Eligible Replacement, as applicable.

***"Replacement Transaction"*** means, for any Terminated Transaction, a transaction that (i) has terms which would be effective to transfer to a transferee all of Party A's rights and obligations under this Agreement, which terms are identical to the terms of this Agreement, other than party names, the effective date of the transfer, tax representations and any representations about the status of the substitute counterparty, notice information and account details, or (ii) (A) would preserve for Party B the economic equivalent of any payment or delivery under this Agreement for the Terminated Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date, and (B) has terms which are, in all material respects, no less beneficial for Party B than those of this Agreement, as determined by Party B.

"***Supplemental Indenture***" means the Supplemental Indenture dated as of [■], among Party B as issuer of Series [■] Notes, **[INDENTURE TRUSTEE]**, as Indenture Trustee, and **[List any other parties]**, which supplements the Trust Indenture.

"***Trust Indenture***" means the Trust Indenture dated as of [■], 2017, between Party B, as issuer, and [INDENTURE TRUSTEE], as Indenture Trustee.

(b) ***Equivalency Clause***. For purposes of disclosure pursuant to the Interest Act (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement, which is to be calculated on any basis other than a full calendar year, is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the number of days in the calendar year in which the period for which interest at such rate is payable ends and the denominator of which is the number of days comprising such other basis.

(c) ***English Language***. The parties hereto have requested that this Agreement and the Schedule be drafted in the English language and that all present and future Confirmations be drafted in the English language. Les parties aux présentes ont requis que cette convention et l'Annexe ainsi que toutes les présentes et futures confirmations soient rédigées en langue anglaise.

(d) ***Eligible Financial Contract***. Each Party, with respect to itself, hereby represents and warrants to the other Party, continuing throughout the term of this agreement, that it is its intention that this Contract and each Transaction hereunder shall constitute an "eligible financial contract" within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any other applicable Canadian insolvency legislation.

(e) ***Telephone Recording***. Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

(f) ***No Reliance***. In connection with the negotiation of, the entering into, and the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction hereunder, each party acknowledges and agrees that: (i) each party is acting for its own account and is not acting as a fiduciary for, or a financial or investment advisor to the other party (or in any similar capacity); (ii) each party is not relying upon any communications (whether written or oral) from the other party as investment advice or as a recommendation to enter into this Agreement, any Credit Support Document to which it is a party and each Transaction hereunder (other than the representations expressly set forth in this Agreement), it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (iii) neither party has received from the other party any assurance or guarantee as to the expected results of any Transaction; and (iv) each party has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own independent investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party.

(g) ***Severability***. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(h) ***Credit Rating Downgrade of Party A***

**(1) Ratings Event I:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from DBRS is not at least, respectively "A" or R-1 (low) or better; or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A2 or P-1 or better (such rating thresholds collectively designated as the **"Ratings Event I Required Rating"** and such failure the **"Ratings Event I Trigger"**, Party A shall at its own expense and not later than 30 Local Business Days following the occurrence of the Ratings Event I (so long as the Ratings Event I is continuing):

(X) transfer acceptable Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(1) of the ISDA Credit Support Annex; or

(Y) either obtain an Eligible Guarantee or transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Z) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency.

**(2) Ratings Event II:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case of a Relevant Entity from DBRS is not at least, respectively BBB or R-2 (middle) or better, or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A3 or P-3 or better (such rating thresholds collectively designated as the **"Ratings Event II Required Rating"** and such failure the **"Ratings Event II Trigger"**, Party A shall at its own expense following the occurrence of a Ratings Event II (so long as such Ratings Event II is continuing):

(X) transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) or another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Y) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency, or

(Z) provide Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(2) of the ISDA Credit Support Annex in an amount as required thereunder until (i) such time as the action set out in this sub-paragraph (2)(X) or (2)(Y) above has been taken, or (ii) the Relevant Entity meets the Ratings Event I Required Rating.

(i) ***Successors***. This Agreement and all obligations of the parties hereunder shall be binding upon than respective successors and assigns and shall, together with the rights and remedies, inure to their benefit.

(j) ***Scope of Agreement***. The parties acknowledge and agree that this Agreement will only apply to Transactions entered into in respect of the Series 2016-1 Notes.

(k) ***Counterparts***. This Schedule may be executed in one or more counterparts, either in original or facsimile or pdf form, each of which shall constitute one and the same document and form part of the Agreement. If an executed copy of this Schedule is transmitted by the parties through transmission by facsimile or e-mail in pdf format, this Schedule shall constitute the original document between the parties and the parties hereby adopt the signatures printed by the receiving facsimile machine or computer as the original signatures of the parties.

(l) ***Transfer***. Exception to the Transfer provisions of Section 7 is that consent to transfer shall not be unreasonably withheld as long as the transferee, designated by Party A, is an Eligible Replacement or otherwise satisfies the Rating Agency Condition in respect of the related Rating Agency. In addition, Party A agrees that it will use reasonable commercial efforts to novate each outstanding Transaction hereunder to an Eligible Replacement if it is requested to do so in connection with an assignment of its interests in the Series [■] Notes pursuant to the Indenture Documents.

(m) **[*Foreign Account Tax Compliance Act*.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance

of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement."] **[NTD: subject to Tax review]**

(n) ***Set-off***. Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement and each Confirmation will be made without set-off or counterclaims.

(o) ***Amendments.*** Party B hereby agrees that it will not amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Related Program Agreements if any such amendment, supplementation, modification, restatement or replacement or waiver or consent is material, except with the prior written consent of Party A and satisfaction of the Rating Agency Condition in respect of each Related Rating Agency. Each Related Rating Agency shall be notified by or on behalf of Party B of any nonmaterial amendments, waivers and consents as soon as possible after such non-material amendments, waivers and consents become effective. Any such proposed change to a Related Program Agreement will be subject to Section [13.19] of the Trust Indenture.

(p) ***Limited Recourse:***

(i) Party A is a Specified Creditor (as defined in the Trust Indenture) and its entitlements under this Agreement are subject to the provisions applicable to Specified Creditors under the Trust Indenture. The right of Party A to payments under this Agreement, or the exercise of rights or remedies against Party B under this Agreement is subject to Sections [8.15] (*Limited Recourse*) and [17.01] (*No Petition*) of the Trust Indenture.

(ii) Part 5(p)(i) survives the termination of this Agreement.

(q) ***Non-Petition***. Party A hereby covenants and agrees that it will not at any time institute or encourage against Party B, or join or acquiesce in any institution against Party B of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency, winding-up or similar law for one year and a day after the latest maturing Note (as defined in the Indenture) in connection with any obligations relating to this Agreement or any of the other Related Program Agreements.

(r) ***Party B Pledge***. Notwithstanding Section 7, Party A acknowledges that Party B has or will pledge its rights under this Agreement to the Indenture Trustee for the benefit of the related Specified Creditors under the Indenture Documents and agrees to the pledge. The Indenture Trustee will not be deemed to be a party to this Agreement. However, the Indenture Trustee, acting on behalf of the related Specified Creditors, has the right to enforce this Agreement against Party A. Party A will be entitled to rely on any notice or communication from the Indenture Trustee to that effect.

## Part 6. FX Transaction and Currency Option Transaction Provisions

(a) ***FX Definitions***

(i) Incorporated Into Agreement. The 1998 ISDA FX and Currency Option Transaction Definitions, as published by the International Swaps and Derivatives Association, Inc., (the "FX Definitions") are incorporated by reference into this Agreement. Any terms used and not otherwise defined in this Agreement that are contained in the FX Definitions shall have the respective meanings specified therein (without regard to any amendments thereto after the date of this Agreement).

(ii) Inconsistency. In the event of any inconsistency between the FX Definitions and any other provisions or definitions that are incorporated by reference into this Agreement, the FX Definitions shall prevail with respect to an FX Transaction or a Currency Option Transaction. In the event of any inconsistency between the FX Definitions and the provisions otherwise

contained in this Agreement, those provisions otherwise contained in this Agreement shall prevail.

(b) ***Confirmations.*** Any FX Transaction or Currency Option Transaction into which the parties may before the date of this Agreement have entered, or may in the future enter, where the relevant Confirmation on its face does not expressly exclude the application of this Agreement, shall (to the extent not otherwise provided for in this Agreement) be subject to, governed by and construed in accordance with this Agreement (in substitution for any existing terms, if any, whether express or implied). Each such FX Transaction and Currency Option Transaction shall be a Transaction, and the documents and other confirming evidence (including electronic messages on an electronic messaging service) exchanged between the parties confirming such FX Transaction or Currency Option Transaction shall each be a Confirmation (even where not so specified therein), for the purposes of this Agreement.

(c) ***Payment Instructions.*** All payments to be made in respect of FX Transactions and Currency Option Transactions shall be made in accordance with standing payment instructions provided by the parties (or as otherwise specified in a Confirmation). Any such instructions from a party must be received no later than one Business Day prior to the Value Date or Premium Payment Date (as the case may be) for such Transaction and otherwise be in conformity with standard inter-dealer market practice regarding foreign currency delivery.

(d) ***FX Transaction Novation Netting.***

(i) Automatic Novation Netting. In addition to the settlement netting provisions of Section 2(c) of this Agreement, unless otherwise agreed, if the parties enter into an FX Transaction that is governed by this Agreement through a pair of Novation Netting Offices giving rise to an obligation of a party under this Agreement to pay an amount of currency (a "Currency Obligation") on the same date and in the same currency as a then existing Currency Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such FX Transaction, each such Currency Obligation shall automatically and without further action be cancelled and simultaneously replaced by a new Currency Obligation for such date determined as follows: the amount of such currency that would otherwise have been payable by each party on such date shall be aggregated and the party with the larger aggregate amount shall have a new Currency Obligation to pay to the other party the amount of such currency by which its aggregate amount exceeds the other party's aggregate amount, provided that if the aggregate amounts are equal, no new Currency Obligation shall arise. This paragraph (d) shall not affect any other Currency Obligation of a party to pay any different currency on the same date. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such novation, or (ii) may fail to make changes in any of its books as a result of any such novation.

(ii) "Novation Netting Office" means, as to either party, the office or offices specified in Part 4, Section A in the Schedule and any other office specified from time to time by one party and agreed to in writing by the other party.

(e) ***Currency Option Transaction Discharge and Termination***

(i) Automatic Discharge and Termination of Offsetting Options. Unless otherwise agreed, any Call Option or any Put Option written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option or a Put Option, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of

the last Premium payable in respect of such Currency Option Transactions; provided that such termination and discharge may only occur in respect of Currency Option Transactions:

(1) each being with respect to the same Put Currency and the same Call Currency;
(2) each having the same Expiration Date and Expiration Time;
(3) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
(4) each having the same Strike Price;
(5) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e. where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction which is partially discharged and terminated shall continue to be a Currency Option Transaction for all purposes of this Agreement. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such discharge and termination, or (ii) may fail to make changes in any of its books as a result of any such discharge and termination.

(ii) ***Additional Definitions***

(1) "Call Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to purchase from the Seller at the Strike Price a specified quantity of the Call Currency.

(2) "Put Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to sell to the Seller at the Strike Price a specified quantity of the Put Currency.

*- signature page follows -*

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

| **[HEDGE PROVIDER]** | **[ISSUER]** |
|---|---|
| (Party A) | (Party B) |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |

[Signature Page – ISDA Schedule]

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Ken Kandeepan; Gadi Mayman; Ronald Kwan; John Kim; James Devine; Scott Nelms (ENERGY); Keley Katona (ENERGY); Mark Donaldson (MOF); Veinot, Cindy (TBS); Steen Hume (CAB) |
| **Cc:** | Tobias P. Whitfield (MOF); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) |
| **Subject:** | FW: Fair Hydro -- Revised Program Agreements |
| **Date:** | Saturday, November 11, 2017 10:21:36 AM |
| **Attachments:** | Declaration of Trust.docx<br>Management Agreement.docx<br>Master Transfer and Servicing Agreement.docx<br>Supplemental Indenture (Long Term Senior).doc<br>Supplemental Indenture (Long Term Subordinated).doc<br>Supplemental Indenture (Short Term Senior).docx<br>Supplemental Indenture (Short Term Subordinated).docx<br>Blackline - Declaration of Trust.pdf<br>Blackline - Management Agreement.pdf<br>Blackline - Master Transfer and Servicing Agreement.pdf<br>Blackline - Supplemental Indenture (Long Term Senior).pdf<br>Blackline - Supplemental Indenture (Subordinated Long Term).pdf<br>Blackline - Supplemental Indenture (Short Term Senior).pdf<br>Blackline - Supplemental Indenture (Subordinated Short Term).pdf |

---

Subordinated debt documents are attached among others, not sure we have seen those before.

**From:** Saulnier, Brett [mailto:bsaulnier@torys.com]
**Sent:** November-10-17 8:40 PM
**To:** Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
**Cc:** 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
**Subject:** Fair Hydro -- Revised Program Agreements

All,

Please find attached the latest drafts of the following documents (together with blacklines against the last draft you received, where applicable):

- Declaration of Trust
- Management Agreement
- Master Transfer and Servicing Agreement
- Supplemental Indenture (Long Term Senior)
- Supplemental Indenture (Long Term Subordinated)
- Supplemental Indenture (Short Term Senior)
- Supplemental Indenture (Short Term Subordinated)

Let us know if you have any questions or if you require any additional blacklines.

Thanks,

Brett

Brett Saulnier
P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**DRAFT: NOVEMBER 8, 2017**

**COMPUTERSHARE TRUST COMPANY OF CANADA**

as Issuer Trustee of

**FAIR HYDRO TRUST**

---

# DECLARATION OF TRUST

Made as of ■, 2017

---

## TABLE OF CONTENTS

**Page**


**ARTICLE 1 INTERPRETATION ..... 1**

1.1 Definitions ..... 1
1.2 Interpretation ..... 5
1.3 Accounting Principles ..... 6
1.4 References to Acts of the Trust ..... 6

**ARTICLE 2 THE TRUST ..... 6**

2.1 Purpose and Activities of the Trust ..... 6
2.2 Limitation on Certain Activities ..... 7
2.3 Name and Head Office ..... 7
2.4 Nature of the Trust ..... 8
2.5 Rights of Unitholders ..... 8

**ARTICLE 3 UNITS ..... 9**

3.1 Nature of Units ..... 9
3.2 Consideration of Units ..... 9
3.3 No Pre-Emptive Rights ..... 9
3.4 Fractional Units ..... 9
3.5 Allotment and Issue ..... 10
3.6 Prohibited Issuances and Transfers ..... 10
3.7 Liability of Unitholders ..... 11

**ARTICLE 4 REDEMPTION OF UNITS ..... 12**

4.1 Redemption of Units ..... 12

**ARTICLE 5 RIGHTS AND POWERS OF ISSUER TRUSTEE ..... 13**

5.1 General Rights and Powers ..... 13
5.2 Acquisition of Assets and Deposit of Funds ..... 13
5.3 Legal Title and Custody ..... 14
5.4 Disposition of Trust Property ..... 14
5.5 Management of Trust Property ..... 14
5.6 Power to Borrow Money and Issue Funding Obligations ..... 14
5.7 Hedging Agreements ..... 15
5.8 Execution of Instruments ..... 15
5.9 Facsimile Signatures ..... 15
5.10 Taxes ..... 15
5.11 Collection ..... 16
5.12 Expenses and Compensation of Issuer Trustee ..... 16
5.13 Allocation ..... 17
5.14 Fiscal Year and Form of Accounts ..... 17
5.15 Power to Contract ..... 17
5.16 Indemnification ..... 18

**TABLE OF CONTENTS**
(continued)

**Page**


5.17 Further Powers ..... 18
5.18 Auditors ..... 19
5.19 Defect in Appointment ..... 19
5.20 Status ..... 19

**ARTICLE 6 REPLACEMENT OF ISSUER TRUSTEE ..... 19**

6.1 Resignation of Issuer Trustee ..... 19
6.2 Removal of Issuer Trustee ..... 20
6.3 Vacancy ..... 20
6.4 Appointment of New Issuer Trustee ..... 20
6.5 Merger, Consolidation and Amalgamation ..... 20
6.6 Vesting in Successor Issuer Trustee ..... 21
6.7 Confidentiality ..... 21
6.8 Right to Disclose ..... 21

**ARTICLE 7 STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS ..... 21**

7.1 Standard of Care ..... 21
7.2 Limitation of Liability of Issuer Trustee ..... 22
7.3 Indemnification of the Issuer Trustee ..... 22
7.4 Reliance upon Advice ..... 23
7.5 Retain Experts ..... 23
7.6 Reliance on Experts ..... 23
7.7 Provisions Regarding Liability ..... 23

**ARTICLE 8 RECORDS ..... 24**

8.1 Records to be Kept ..... 24
8.2 Segregation of Assets ..... 24
8.3 Method of Keeping Records ..... 24
8.4 Annual Financial Statements ..... 24

**ARTICLE 9 MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS ..... 24**

9.1 Annual Meeting ..... 24
9.2 Other Meetings ..... 24
9.3 Quorum and Voting ..... 25
9.4 Written Resolution ..... 25

**ARTICLE 10 AMENDMENT ..... 25**

10.1 Amendment ..... 25
10.2 Automatic Amendment ..... 26
10.3 Supplemental Declaration of Trust ..... 26

**TABLE OF CONTENTS**
(continued)

**Page**

**ARTICLE 11 DISTRIBUTION OF TRUST PROPERTY ..... 26**

11.1 Distributions ..... 26
11.2 Allocation ..... 28
11.3 Payment of Distributions ..... 28
11.4 Legal Rights ..... 29
11.5 Income Tax Matters ..... 29
11.6 Designations ..... 30
11.7 Withholding Taxes ..... 30

**ARTICLE 12 TERMINATION OF THE TRUST ..... 30**

12.1 Termination ..... 30

**ARTICLE 13 GENERAL ..... 31**

13.1 Irrevocability ..... 31
13.2 Change of Office ..... 31
13.3 Execution of Instruments ..... 31
13.4 Manner of Giving Notice ..... 31
13.5 Taxation Information ..... 31
13.6 Severability ..... 32
13.7 Governing Law ..... 32
13.8 Language ..... 32

**THIS DECLARATION OF TRUST** is made as of ■, 2017 by Computershare Trust Company of Canada, a trust company established under the laws of Canada (the "**Issuer Trustee**").

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

**AND WHEREAS** the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

**NOW THEREFORE** the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Adjusted Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Excess Income on Redemption**" has the meaning ascribed thereto in subsection 11.1(2).

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO.

"**Net Realized Capital Gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**Net Realized Capital Gains of the Trust Allocated on Redemption**" has the meaning ascribed thereto in subsection 4.1(5).

"**New Holder**" has the meaning ascribed thereto in subsection 3.6(1).

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, the Change of Law Protection Agreement and any

hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means Fair Hydro Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

**1.2 Interpretation**

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

### 1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

### 1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

## ARTICLE 2
## THE TRUST

### 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d)

above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

**2.2 Limitation on Certain Activities**

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

**2.3 Name and Head Office**

The English form of the name of the Trust is "Fair Hydro Trust" and the French form of the name of the Trust is "■". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of

such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

### 2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

### 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

## ARTICLE 3
## UNITS

### 3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

### 3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

### 3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

### 3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

### 3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

### 3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required

for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

### 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

## ARTICLE 4
## REDEMPTION OF UNITS

### 4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the "**Redemption Price**") established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will satisfy the Redemption Price, subject to compliance with any regulatory requirements, by either issuing a promissory note to the Unitholder, which note shall have a principal amount equal to the Redemption Price and such other terms as is determined at the time of issuance by the Issuer Trustee, or by distributing to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. In the event that property is distributed *in specie*, the amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the "**Adjusted Redemption Price**").

(4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such *in specie* distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the "**Net Realized Capital Gains of the Trust Allocated on Redemption**"). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized

Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

## ARTICLE 5
## RIGHTS AND POWERS OF ISSUER TRUSTEE

### 5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. The Issuer Trustee shall exercise the functions of the trustee of the Trust in Ontario, Canada. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

### 5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

### 5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

### 5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

### 5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

### 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering

memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

### 5.7 Hedging Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

### 5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

### 5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

### 5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

### 5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

### 5.12 Expenses and Compensation of Issuer Trustee

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby

created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

### 5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

### 5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

### 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust

Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

**5.16 Indemnification**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

**5.17 Further Powers**

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable

in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

### 5.18 Auditors

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

### 5.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

### 5.20 Status

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

## ARTICLE 6
## REPLACEMENT OF ISSUER TRUSTEE

### 6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating

Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

**6.2 Removal of Issuer Trustee**

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

**6.3 Vacancy**

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

**6.4 Appointment of New Issuer Trustee**

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

**6.5 Merger, Consolidation and Amalgamation**

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of

Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

### 6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

### 6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

### 6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

## ARTICLE 7
## STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

### 7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty,

the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

### 7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

### 7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the

extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

### 7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

### 7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

### 7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

### 7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the

Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

## ARTICLE 8
## RECORDS

### 8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

### 8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

### 8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

### 8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

## ARTICLE 9
## MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

### 9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

### 9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer

Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

### 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

### 9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

## ARTICLE 10
## AMENDMENT

### 10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

### 10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

### 10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

## ARTICLE 11
## DISTRIBUTION OF TRUST PROPERTY[1]

### 11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the "**Excess Income on Redemption**"), the Issuer Trustee shall declare to be

[1] Subject to PILs exemption.

payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.

(3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(4) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the "SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(5) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of

a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

**11.2 Allocation**

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);

(b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(3) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

**11.3 Payment of Distributions**

(1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other

manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

**11.4 Legal Rights**

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

**11.5 Income Tax Matters**

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

### 11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

### 11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions or other amounts payable under this Declaration of Trust amounts required by law to be deducted or withheld from such distributions or payments, whether such distributions or payments are satisfied in the form of cash, cheque, promissory note, additional Units or otherwise. To the extent that any amounts are deducted or withheld from payments made by cash, cheque or wire transfer, including those described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of the distribution or other amount payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution or payment that is satisfied in a manner other than cash, cheque or wire transfer, including those described in subsections 4.1(3), 4.1(5) or 11.3(3), the recipient of the payment shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

## ARTICLE 12
## TERMINATION OF THE TRUST

### 12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust,

including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

## ARTICLE 13
## GENERAL

### 13.1 Irrevocability

The Trust shall be irrevocable.

### 13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

### 13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

### 13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

### 13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

### 13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

### 13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

### 13.8 Language

*Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.* The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**IN WITNESS WHEREOF** the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

**COMPUTERSHARE TRUST COMPANY OF CANADA**,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

**DRAFT: NOVEMBER 10, 2017**

# MANAGEMENT AGREEMENT

between

**FAIR HYDRO TRUST**
as Issuer

- and -

**ONTARIO POWER GENERATION INC.**
as Manager

Acknowledged and Accepted by

**BNY TRUST COMPANY OF CANADA**
as Indenture Trustee

**Dated as of ■, 2017**

## TABLE OF CONTENTS

**ARTICLE 1**
**INTERPRETATION ..... 2**
1.1 Definitions ..... 2

**ARTICLE 2**
**INTRODUCTORY PROVISIONS ..... 4**
2.1 Sections and Headings ..... 4
2.2 Extended Meanings ..... 4
2.3 References to Acts of the Issuer or the Issuer Trustee ..... 5

**ARTICLE 3**
**APPOINTMENT OF THE MANAGER ..... 5**
3.1 Appointment and Authority of the Manager ..... 5

**ARTICLE 4**
**DUTIES AND OBLIGATIONS OF THE MANAGER ..... 6**
4.1 Program Agreements ..... 6
4.2 Issuer Investment Interest ..... 9
4.3 Collection of Clean Energy Adjustments ..... 10
4.4 Investment Interest Records ..... 11
4.5 Payment of Other Issuer Fees and Expenses ..... 12
4.6 Delegation ..... 12
4.7 Annual Compliance Certificates ..... 12
4.8 Acknowledgment of Duties as Financial Services Manager ..... 13

**ARTICLE 5**
**OTHER PROVISIONS RELATING**
**TO THE DUTIES AND COMPENSATION ..... 13**
5.1 Standard of Care ..... 13
5.2 Compliance with Program Agreements; Conformity with Law ..... 14
5.3 Liabilities ..... 14
5.4 Compensation of the Manager ..... 15
5.5 Compensation of the Issuer ..... 15
5.6 Indemnification by Manager ..... 15
5.7 Contracting with Itself and Affiliates ..... 17

**ARTICLE 6**
**REPRESENTATIONS AND WARRANTIES ..... 18**
6.1 Representations of the Issuer ..... 18
6.2 Representations of the Manager ..... 18

**ARTICLE 7**
**TERMINATION AND RESIGNATION ..... 18**
7.1 Termination ..... 18

**ARTICLE 8**
**MISCELLANEOUS ..... 18**
8.1 Acknowledgement of Indenture ..... 18
8.2 Appointment of Manager as Attorney-in-Fact ..... 19
8.3 Amendments and Waivers ..... 19
8.4 Withholding Rights ..... 19
8.5 No Petition ..... 20
8.6 Notice ..... 20
8.7 Recourse to Issuer Trustee and the Issuer ..... 21
8.8 Severability ..... 21
8.9 Execution of Counterparts; Electronic Delivery ..... 21
8.10 Governing Law ..... 21
8.11 Grant of Security Interest to Indenture Trustee ..... 22

**EXHIBIT**

Exhibit A – Annual Compliance Certificate

# MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**ONTARIO POWER GENERATION INC.**, a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

**BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

**WHEREAS** the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

**AND WHEREAS** Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

**AND WHEREAS** the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

**AND WHEREAS** the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement;

**AND WHEREAS** the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this Agreement, as amended, supplemented, modified, replaced or amended and restated from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital amalgamated under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Indenture Indemnified Losses**" has the meaning ascribed to such term in Section 5.6(b);

"**Indenture Indemnified Person**" means the Indenture Trustee and its officers, directors and employees;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

"**Management Fees**" means the fees established and charged by the Financial Services Manager in accordance with section 19(3) of the Act and the Regulations and approved by the Board in accordance with section 19(4) of the Act;

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

## ARTICLE 2
## INTRODUCTORY PROVISIONS

### 2.1 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice

versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

### 2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

## ARTICLE 3
## APPOINTMENT OF THE MANAGER

### 3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement

on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.

## ARTICLE 4
## DUTIES AND OBLIGATIONS OF THE MANAGER

### 4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of the Indenture and any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

**4.2 Issuer Investment Interest**

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between Servicer CEA Receipts and the Clean Energy Adjustment;

(e) instituting any Proceeding necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act, the Regulations or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any Proceeding necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

**4.3 Collection of Clean Energy Adjustments**

The Manager will as agent for and on behalf of the Issuer perform the following in connection with the collection of Clean Energy Adjustments:

(a) review each report delivered by the IESO under Section 3.4(b) of the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve the failures and discrepancies which have not been remedied or adequately explained by Electricity Vendors;

(b) institute any Proceeding necessary to compel performance by the Electricity Vendors of any of their obligations or duties under the Act and the Regulations including with respect to the invoicing, collection, receipt, remittance and reporting in respect of Clean Energy Adjustments; and

(c) as the Manager determines necessary, review or caused to be reviewed, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that if there is evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Manager shall promptly review or cause to be reviewed the records of such Electricity Vendor as the Manager deems reasonably necessary to cause compliance by such Electricity Vendor.

**4.4 Investment Interest Records**

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee,

as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section 4.4 shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section 4.4.

(c) Nothing in this Section 4.4 shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section 4.4, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

**4.5 Payment of Other Issuer Fees and Expenses**

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

**4.6 Delegation**

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

**4.7 Annual Compliance Certificates**

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

### 4.8 Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

## ARTICLE 5
## OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

### 5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in

respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

**5.2 Compliance with Program Agreements; Conformity with Law**

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

**5.3 Liabilities**

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the Standard of Care.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

## 5.4 Compensation of the Manager

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, and so long as the Financial Services Manager is also the Manager, all services provided and duties performed by the Financial Services Manager, the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements, the Management Fees. The Management Fees are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

## 5.5 Compensation of the Issuer

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

## 5.6 Indemnification by Manager

(a) The Manager shall indemnify and defend and hold harmless the Issuer from and against, any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the Standard of Care, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Issuer.

(b) The Manager shall indemnify each Indenture Indemnified Person and defend and hold harmless each such Indenture Indemnified Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indenture Indemnified Losses**") imposed on, incurred by or asserted against such Indenture Indemnified Person, as a result of (i) the failure of the Manager to perform its covenants and other obligations under this Agreement; or (ii) the breach by the Manager of any of its representations or warranties under this Agreement and, except to the extent of Indenture Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Indenture Indemnified Person seeking indemnification

hereunder; provided that, in each case, the Manager shall not be required to indemnify an Indenture Indemnified Person for any amount paid or payable by such Indenture Indemnified Person in the settlement of any Proceeding or investigation without the written consent of the Manager, which consent shall not be unreasonably withheld. Promptly after receipt by an Indenture Indemnified Person of notice of the commencement of any Proceeding or investigation, such Indenture Indemnified Person shall, if a claim in respect thereof is to be made against the Manager under this Section 5.6(b), notify the Manager in writing of the commencement thereof. Failure by an Indenture Indemnified Person to so notify the Manager shall relieve the Manger from the obligation to indemnify and hold harmless such Indenture Indemnified Person under this Section 5.6(b) only to the extent that the Manager suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 5.6(b), the Manager shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indenture Indemnified Person, the defence of any such Proceeding or investigation (in which case the Manager shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indenture Indemnified Person except as set forth below); provided, that the Indenture Indemnified Person shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the Manager's election to assume the defence of any Proceeding or investigation, the Indenture Indemnified Person shall have the right to employ separate counsel, and the Manager shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indenture Indemnified Person and the Manager and the Indenture Indemnified Person shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the Manager, (ii) the Manager shall not have employed counsel reasonably satisfactory to the Indenture Indemnified Person to represent the Indenture Indemnified Person within a reasonable time after notice of the institution of such action, or (iii) the Manager authorizes the Indenture Indemnified Person to employ separate counsel at the expense of the Manager. Notwithstanding the foregoing, the Manager shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indenture Indemnified Persons other than one local counsel, if appropriate. The Manager will not, without the prior written consent of the Indenture Indemnified Person, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 5.6(b) (whether or not the Indenture Indemnified Person is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indenture Indemnified Person from all liability arising out of such claim or Proceeding.

(c) Indemnification under Section 5.6(b) shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the

termination of this Agreement and will rank pari passu with other general, unsecured obligations of the Manager.

(d) Notwithstanding anything contained in this Agreement, it is expressly understood that the Manager is not agreeing to indemnify or hold the Issuer or any Indenture Indemnified Person harmless with respect to any of the following:

(i) payments due on Issuer Funding Obligations or other amounts borrowed;

(i) any breach or failure to perform on the part of any other third party under any Program Agreement;

(ii) any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

(iii) any liability of the Issuer or any Indenture Indemnified Person accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(iv) any losses of the Issuer or any Indenture Indemnified Person arising due to risks inherent in the Issuer Investment Interest;

(v) any statements or certificates provided by the Issuer to the effect that (X) any Funding Obligation is consistent with the Financing Plan or (Y) the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period; or

(vi) any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

(e) Notwithstanding anything contained in this Agreement, it is expressly understood that the Manager is not agreeing to indemnify or hold harmless: (i) the Issuer with respect to any amount for which the Issuer agrees to indemnify the Manager hereunder; or (ii) the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

**5.7 Contracting with Itself and Affiliates**

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

### 6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that (a) the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and (b) this Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

### 6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (a) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager, (b) this Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (c) it is a resident of Canada for purposes of the *Income Tax Act* (Canada).

## ARTICLE 7
## TERMINATION AND RESIGNATION

### 7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and 8.5) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30$^{th}$ day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Acknowledgement of Indenture

The Manager (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Indenture, (ii) irrevocably authorizes

and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in the Indenture and (iii) appoints the Indenture Trustee as its agent for any and all such purposes.

**8.2 Appointment of Manager as Attorney-in-Fact**

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

**8.3 Amendments and Waivers**

(a) Subject to Section 8.3(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

**8.4 Withholding Rights**

The parties hereto shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial,

territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.5 No Petition**

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

**8.6 Notice**

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

with a copy to:

Computershare Trust Company of Canada
100 University Avenue, 11th Floor
Toronto, Ontario
M5J 2Y1

Email: ■
Attention: ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

**8.7 Recourse to Issuer Trustee and the Issuer**

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

**8.8 Severability**

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

**8.9 Execution of Counterparts; Electronic Delivery**

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

**8.10 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**8.11 Grant of Security Interest to Indenture Trustee**

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

***[Remainder of page intentionally left blank.]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**FAIR HYDRO TRUST, by its sole trustee, COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ACKNOWLEDGED AND ACCEPTED:**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

## EXHIBIT A

## ANNUAL COMPLIANCE CERTIFICATE

**TO**: Computer Share Trust Company of Canada, (the "**Issuer Trustee**") in its capacity as issuer trustee of Fair Hydro Trust (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**DRAFT: NOVEMBER 10, 2017**

# MASTER TRANSFER AND SERVICING AGREEMENT

between

**FAIR HYDRO TRUST**
as Issuer

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
as Transferor and Servicer

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION ..... 2**
1.1 Definitions ..... 2
1.2 Sections and Headings ..... 7
1.3 Extended Meanings ..... 7

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET ..... 8**
2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset ..... 8
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset ..... 9

**ARTICLE 3 ROLE OF THE SERVICER ..... 11**
3.1 Designation of Servicer ..... 11
3.2 Forecasts and Other Information ..... 11
3.3 Clean Energy Adjustments and Electricity Vendors ..... 11
3.4 Reporting ..... 13
3.5 Remittances ..... 14
3.6 Reimbursement of Servicer ..... 14
3.7 Limits to Obligations ..... 14
3.8 Servicing and Maintenance Standards ..... 15
3.9 Appointments ..... 15
3.10 Term ..... 16
3.11 Mergers ..... 16
3.12 The IESO Not to Resign as Servicer ..... 17
3.14 IESO Security for CEA Remittances ..... 17

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO ..... 18**
4.1 Representations and Warranties ..... 18
4.2 Survival ..... 20

**ARTICLE 5 COVENANTS OF THE IESO ..... 20**
5.1 Existence ..... 20
5.2 No Transfer or Liens ..... 20
5.3 Notice of Liens ..... 20
5.4 Compliance with Law ..... 20
5.5 Covenants Related to the Investment Interest ..... 21
5.6 Non-petition Covenants ..... 21
5.7 Disclosure ..... 21
5.8 Further Assurances ..... 22
5.9 Access to Certain Records and Information ..... 22
5.10 Maintenance of Operations ..... 22

**ARTICLE 6 IESO INDEMNITIES ..... 22**
6.1 Liability of the IESO; Indemnities ..... 22

**TABLE OF CONTENTS**
(continued)

**Page**

**ARTICLE 7 SERVICER DEFAULT ..... 24**
7.1 Servicer Default ..... 24
7.2 Appointment of Successor Servicer ..... 25
7.3 Waiver of Past Defaults ..... 26
7.4 Notice of Servicer Default ..... 26
7.5 Cooperation with Successor Servicer ..... 26
**ARTICLE 8 MISCELLANEOUS ..... 26**
8.1 Amendment ..... 26
8.2 Withholding Rights ..... 27
8.3 No Partnership ..... 27
8.4 Notices ..... 27
8.5 Assignment ..... 28
8.6 Limitations on Rights of Third Parties ..... 28
8.7 Severability ..... 28
8.8 Separate Counterparts; Electronic Delivery ..... 28
8.9 Governing Law ..... 28
8.10 Grant of Security Interest to Indenture Trustee ..... 28
8.11 Limitation of Liability of the Issuer Trustee ..... 29
8.12 Waivers ..... 30

**EXHIBIT**

Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly Carrying Costs Statement

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

**AND WHEREAS**, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

**AND WHEREAS** the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

**AND WHEREAS** the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

**AND WHEREAS** in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means Fair Hydro Trust, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means a rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section 3.10;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

### 1.2 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

### 2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a

binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by wire transfer or electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

**2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset**

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO

officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred and be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in Section 3.6 or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith.

### 3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a), which information shall be provided on a non-reliance basis other than with respect to the use thereof in relation to the duties, obligations or rights of the Issuer or the Manager pursuant to the Act and the Regulations; and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, which is reasonably available to the Transferor directly or upon request, can lawfully be provided and can be provided without incurring material incremental expense.

### 3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments, make commercially reasonable efforts to cause each Electricity Vendor to:

(i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to any of the foregoing matters.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the

Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d);

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report,

(iv) that delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or

(v) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

and attempt to resolve the applicable issue; and

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

**3.4 Reporting**

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) report monthly to the Issuer any matters referred to in Section 3.3(j) which have not been resolved and any explanation provided therefor by the Electricity Vendor;

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer,

and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

### 3.5 Remittances

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

### 3.6 Reimbursement of Servicer

The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered or recoverable by the Servicer pursuant to sections 25(1) and 25.1 of the *Electricity Act, 1998*, which direct costs the IESO shall have no obligation to seek recovery for under sections 25(1) and 25.1 of the *Electricity Act, 1998*; provided, however, that this Section 3.6 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.

### 3.7 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree that the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.7.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO.

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, or to establish a segregated account

into which Electricity Vendor CEA Collections are to be deposited, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO is not responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor and any other reporting in the Electricity Vendor Billing Period Report.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

**3.8 Servicing and Maintenance Standards**

Subject to Section 3.7, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

**3.9 Appointments**

The Servicer may at any time appoint OPG or any other Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that in

respect of the appointment of a Person other than OPG, the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of OPG or such other Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of OPG or any other such Person shall be as agreed between the Servicer and OPG or such other Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.12.

### 3.10 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

### 3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

### 3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

### 3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14$^{th}$] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

### 3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

Subject to Section 3.7, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture,

agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

**4.2 Survival**

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

## ARTICLE 5
## COVENANTS OF THE IESO

**5.1 Existence**

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

**5.2 No Transfer or Liens**

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

**5.3 Notice of Liens**

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

**5.4 Compliance with Law**

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply

would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

**5.5 Covenants Related to the Investment Interest**

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

**5.6 Non-petition Covenants**

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

**5.7 Disclosure**

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information

provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

### 5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

### 5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

### 5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice

of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.12 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

**7.2 Appointment of Successor Servicer**

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the

Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

**7.3 Waiver of Past Defaults**

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

**7.4 Notice of Servicer Default**

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

**7.5 Cooperation with Successor Servicer**

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

## ARTICLE 8
## MISCELLANEOUS

**8.1 Amendment**

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition, such satisfaction to be confirmed by the Issuer at the time of such amendment. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

**8.2 Withholding Rights**

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.3 No Partnership**

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

**8.4 Notices**

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

**8.5 Assignment**

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

**8.6 Limitations on Rights of Third Parties**

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**8.7 Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**8.8 Separate Counterparts; Electronic Delivery**

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

**8.9 Governing Law**

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**8.10 Grant of Security Interest to Indenture Trustee**

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors

against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

**8.11 Limitation of Liability of the Issuer Trustee**

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in

their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

**8.12 Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**FAIR HYDRO TRUST**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor and Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

TO: Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by wire transfer or electronic funds transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

**FAIR HYDRO TRUST**, by its Manager,
**ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

[**NTD: form to be settled]**

**EXHIBIT C**

**FORM OF MONTHLY CARRYING COSTS STATEMENT**

See Attached

**MONTHLY CARRYING COSTS STATEMENT**

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer or electronic funds transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

**[NTD: Wire transfer instructions to be provided by OPG.]**

DATED this ■ day of ■, 20■.

**FAIR HYDRO TRUST**, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

# SENIOR SERIES [2017-1] SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% SENIOR NOTES DUE ●, SERIES 2017-1**
**OF FAIR HYDRO TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 SERIES 2017-1 SENIOR NOTES ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2
2.3 Delivery ..... 3
2.4 Payment of Interest ..... 3
2.5 Payment of Principal ..... 4
2.6 [Redemption and Repurchase ..... 4
2.7 Indemnification by the Issuer ..... 4
2.8 Taxes ..... 5
2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes ..... 6
2.10 Acceleration Events ..... 7
[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.] ..... 7

ARTICLE 3 REPRESENTATIONS AND WARRANTIES ..... 7
3.1 Representations and Warranties of the Issuer ..... 7
3.2 Survival ..... 7

ARTICLE 4 GENERAL ..... 7
4.1 Acceptance of Trust ..... 7
4.2 Confirmation of Trust Indenture ..... 7
4.3 Indenture Trustee Not Bound to Act ..... 8
4.4 Successor and Assigns ..... 8
4.5 Specified Creditors ..... 8
4.6 Waiver ..... 8
4.7 Notice ..... 8
4.8 No Waiver: Remedies ..... 8
4.9 Entire Agreement ..... 9
4.10 Governing Law and Attornment ..... 9
4.11 Expenses ..... 9
4.12 Further Assurances ..... 9
4.13 Limitation of Liability of Issuer Trustee ..... 9
4.14 Execution in Counterparts ..... 10
4.15 Delivery of Executed Copies ..... 10

# ●% SENIOR NOTES DUE ●, SERIES 2017-1

**THIS SENIOR NOTES SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ●, Series 2017-1 (the "**Series 2017-1 Senior Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are

applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 SENIOR NOTES

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% Senior Notes due ●, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be Senior Notes and will not be subordinated to any other Class, Series or Tranche of Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 Senior Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

| **Payment Date** | **Principal Accumulation Amount** |
|---|---|
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Principal Payment Date | $● |

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

**2.3 Delivery**

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

**2.4 Payment of Interest**

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the

certificate representing the Series 2017-1 Senior Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

**2.5 Payment of Principal**

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

**2.6 [Redemption and Repurchase**

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

**2.7 Indemnification by the Issuer**

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury

suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

**2.8 Taxes**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes**

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

(d) The Series 2017-1 Senior Notes will have been rated **[AAA(sp)]** by DBRS and **[Aaa(sp)]** by Moody's.

### 2.10 Acceleration Events

**[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]**

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

**FAIR HYDRO TRUST**, by

**ONTARIO POWER GENERATION INC.**,
not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

## SCHEDULE A

## DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

# SUBORDINATED SERIES [2017-1] SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% SUBORDINATED NOTES DUE ●, SERIES 2017-1**
**OF FAIR HYDRO TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 SERIES 2017-1 SUBORDINATED NOTES ..... 2
2.1 Creation of Series 2017-1 Subordinated Notes ..... 2
2.2 Principal Terms ..... 2
2.3 Delivery ..... 3
2.4 Payment of Interest ..... 4
2.5 Payment of Principal ..... 4
2.6 [Redemption and Repurchase ..... 4
2.7 Indemnification by the Issuer ..... 5
2.8 Taxes ..... 5
2.9 Conditions Precedent to Issuance of Series 2017-1 Subordinated Notes ..... 6
2.10 Acceleration Events ..... 7
[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.] ..... 7

ARTICLE 3 REPRESENTATIONS AND WARRANTIES ..... 7
3.1 Representations and Warranties of the Issuer ..... 7
3.2 Survival ..... 7

ARTICLE 4 GENERAL ..... 7
4.1 Acceptance of Trust ..... 7
4.2 Confirmation of Trust Indenture ..... 7
4.3 Indenture Trustee Not Bound to Act ..... 8
4.4 Successor and Assigns ..... 8
4.5 Specified Creditors ..... 8
4.6 Waiver ..... 8
4.7 Notice ..... 8
4.8 No Waiver: Remedies ..... 8
4.9 Entire Agreement ..... 9
4.10 Governing Law and Attornment ..... 9
4.11 Expenses ..... 9
4.12 Further Assurances ..... 9
4.13 Limitation of Liability of Issuer Trustee ..... 9
4.14 Execution in Counterparts ..... 10
4.15 Delivery of Executed Copies ..... 10

# ●% SUBORDINATED NOTES DUE ●, SERIES 2017-1

**THIS SUBORDINATED NOTES SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Subordinated Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Subordinated Notes designated as the ●% Subordinated Notes due ●, Series 2017-1 (the "**Series 2017-1 Subordinated Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Subordinated Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental

Indenture are applicable only in respect of the Series 2017-1 Subordinated Notes and not the Subordinated Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Subordinated Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Subordinated Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 SUBORDINATED NOTES

### 2.1 Creation of Series 2017-1 Subordinated Notes

There is hereby created a Series of Subordinated Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●%Subordinated Notes due ●, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Subordinated Notes will:

(a) be designated as set out in Section 2.1;

(b) be Subordinated Notes and will not be subordinated to any other Class, Series or Tranche of Notes other than all Senior Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Subordinated Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Subordinated Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note; **[NTD: To be confirmed.]**

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 Subordinated Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

| **Payment Date** | **Principal Accumulation Amount** |
|---|---|
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Principal Payment Date | $● |

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

**2.3 Delivery**

On the date of issuance of the Series 2017-1 Subordinated Notes, Series 2017-1 Subordinated Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

**2.4 Payment of Interest**

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Subordinated Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Subordinated Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 Subordinated Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

**2.5 Payment of Principal**

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Subordinated Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Subordinated Notes to the extent of the sum represented thereby.

**2.6 [Redemption and Repurchase**

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Subordinated Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Subordinated Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Subordinated Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Subordinated Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Subordinated Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Subordinated Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Subordinated Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

## 2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

## 2.8 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such

other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**2.9 Conditions Precedent to Issuance of Series 2017-1 Subordinated Notes**

On or prior to the initial issuance of Series 2017-1 Subordinated Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Subordinated Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Subordinated Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**]. **[NTD: To be confirmed.]**

### 2.10 Acceleration Events

**[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]**

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Subordinated Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

**FAIR HYDRO TRUST** by

**ONTARIO POWER GENERATION INC.**,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA**, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

## SCHEDULE A

## DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Subordinated Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Subordinated Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Subordinated Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 Subordinated Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Subordinated Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 Subordinated Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Subordinated Note**" means any one of the Series 2017-1 Subordinated Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

## SCHEDULE B

## [FORM OF NOTE]

## SERIES 2017-1 SUBORDINATED NOTE

●

# SENIOR SERIES 2017-1

# SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**●**
**as Administrative Agent**

**and**

**CERTAIN CP CONDUIT PURCHASERS,**
**CERTAIN NON-CONDUIT PURCHASERS**
**CERTAIN FUNDING AGENTS**
**and CERTAIN GROUP BANKS**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 PRINCIPAL TERMS ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2

ARTICLE 3 NOTE PURCHASE FACILITY ..... 3
3.1 Purchase of Notes by the Purchasers ..... 3
3.2 Delivery ..... 4
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount ..... 4
3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination ..... 8
3.5 Increases and Reductions of the Commitments ..... 8
3.6 Interest; Fees and Other Amounts ..... 9
3.7 Accumulation and Repayment of Principal ..... 9
3.8 Indemnification by the Issuer ..... 10
3.9 Funding Agents ..... 10
3.10 Taxes ..... 11
3.11 Increased Costs ..... 12

ARTICLE 4 CONDITIONS PRECEDENT ..... 13
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes ..... 13
4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes ..... 15

ARTICLE 5 REPRESENTATIONS AND WARRANTIES ..... 16
5.1 Representations and Warranties of the Issuer ..... 16
5.2 Representations and Warranties of the Purchasers ..... 16
5.3 Survival ..... 16

ARTICLE 6 COVENANTS ..... 17
6.1 Covenants of the Issuer ..... 17

ARTICLE 7 AGENTS ..... 18
7.1 Administrative Agent ..... 18
7.2 Funding Agents ..... 20

ARTICLE 8 GENERAL ..... 22
8.1 Successor and Assigns ..... 22
8.2 Waiver ..... 25

**TABLE OF CONTENTS**
(continued)

**Page**


8.3 Notice ..... 25
8.4 No Waiver: Remedies ..... 25
8.5 Entire Agreement ..... 26
8.6 Governing Law and Attornment ..... 26
8.7 Acknowledgment of Trust Indenture and No Proceedings ..... 26
8.8 Expenses ..... 26
8.9 Further Assurances ..... 27
8.10 Confidentiality ..... 27
8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions ..... 28
8.12 Limitation of Liability of Issuer Trustee ..... 28
8.13 Execution in Counterparts ..... 29
8.14 Delivery of Executed Copies ..... 29

# FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SENIOR NOTES

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust

Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

### 3.2 Delivery

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

### 3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with

a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $1,000,000 or more, or (B) if less than $1,000,000, the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the

related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date.

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; **[NTD: OPG would like to understand what this account is needed for]** and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

### 3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

### 3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $10,000,000 or a whole multiple of $1,000,000 in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be

subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

**3.6 Interest; Fees and Other Amounts**

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

**3.7 Accumulation and Repayment of Principal**

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount

for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

### 3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding

Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

**3.10 Taxes**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**3.11 Increased Costs**

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii)

relating to any period ending, and of which such Affected Party has had knowledge, more than ninety (90) days prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full (or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made).

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

**4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes**

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

### 5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

## ARTICLE 6
## COVENANTS

### 6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than twenty-five percent (25)% of the aggregate outstanding principal amount of all Issuer Funding Obligations. **[NTD: OPG has discussed with Dealers.]**

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders, such consent not to be unreasonably withheld or delayed.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

**[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]**

## ARTICLE 7
## AGENTS

### 7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

**7.2 Funding Agents**

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such

Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and

investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

## ARTICLE 8
## GENERAL

### 8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal

Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would

have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group

Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

**8.2 Waiver**

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

**8.3 Notice**

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

- ●

**8.4 No Waiver: Remedies**

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 8.5 Entire Agreement

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

### 8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers; and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

**8.9 Further Assurances**

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

**8.10 Confidentiality**

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as

required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

**8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**8.12 Limitation of Liability of Issuer Trustee**

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer

Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

### 8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

**[FAIR HYDRO TRUST]**, as Issuer

**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

●,

By: _____
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable **[pursuant to Section [8.02] of the Trust Indenture]**. **[NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]**

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit

Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-

Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a

Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) the product of (i) $100,000,000 and (ii) the Commitment Percentage of such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD: OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.]**

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS,

or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to

time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**SCHEDULE B**

**[FORM OF NOTE]**

**SERIES 2017-1 SENIOR NOTE**

●

## SCHEDULE C

## FORM OF INCREASE NOTICE

●

## SCHEDULE D

## FORM OF DECREASE NOTICE

●

## SCHEDULE E

## PURCHASER GROUPS

# SUBORDINATED SERIES 2017-1

# SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**ONTARIO POWER GENERATION INC.**
**as Purchaser**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 PRINCIPAL TERMS ..... 2
2.1 Creation of Series 2017-1 Subordinated Notes ..... 2
2.2 Principal Terms ..... 2

ARTICLE 3 NOTE PURCHASE FACILITY ..... 3
3.1 Purchase of Notes by the Purchaser ..... 3
3.2 Delivery ..... 3
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Subordinated Principal Amount ..... 3
3.4 Procedure for Decreasing the Series 2017-1 Subordinated Principal Amount ..... 4
3.5 Increases and Reductions of the 2017-1 Maximum Subordinated Principal Amount ..... 5
3.6 Interest; Other Amounts ..... 5
3.7 Accumulation and Repayment of Principal ..... 5
3.8 Indemnification by the Issuer ..... 6
3.9 Taxes ..... 6
3.10 Increased Costs ..... 8
3.11 Acceleration Events ..... 9

ARTICLE 4 CONDITIONS PRECEDENT ..... 9
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Subordinated Notes ..... 9
4.2 Conditions Precedent to each Increase under Series 2017-1 Subordinated Notes ..... 11

ARTICLE 5 REPRESENTATIONS AND WARRANTIES ..... 11
5.1 Representations and Warranties of the Issuer ..... 11
5.2 Representations and Warranties of the Purchaser ..... 12
5.3 Survival ..... 12

ARTICLE 6 COVENANTS ..... 12
6.1 Covenants of the Issuer ..... 12

ARTICLE 7 GENERAL ..... 13
7.1 Successor and Assigns ..... 13
7.2 Waiver ..... 13
7.3 Notice ..... 13

**TABLE OF CONTENTS**
(continued)

**Page**


7.4 No Waiver: Remedies ..... 14
7.5 Entire Agreement ..... 14
7.6 Governing Law and Attornment ..... 14
7.7 Acknowledgment of Trust Indenture and No Proceedings ..... 14
7.8 Expenses ..... 14
7.9 Further Assurances ..... 15
7.10 Confidentiality ..... 15
7.11 Limitation of Liability of Issuer Trustee ..... 16
7.12 Execution in Counterparts ..... 16
7.13 Delivery of Executed Copies ..... 17

# FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SUBORDINATED NOTES

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), and Ontario Power Generation Inc., in its capacity as the purchaser (the "**Purchaser**");

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** pursuant to a Supplemental Indenture dated the date hereof between the Issuer Trustee, in its capacity as trustee of the Issuer, the Indenture Trustee, ■, in its capacity as the administrative agent for certain purchaser groups (the "**Administrative Agent**"), certain non-conduit purchasers from time to time party thereto, certain commercial paper conduit purchasers from time to time party thereto, and certain funding agents from time to time party thereto (the "**Senior Series 2017-1 Supplemental Indenture**"), the Issuer issued floating rate variable funding Series 2017-1 Senior Notes (the "**Series 2017-1 Senior Notes**");

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Subordinated Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection

with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Subordinated Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Subordinated Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Subordinated Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Subordinated Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 Subordinated Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Subordinated Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Subordinated Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Subordinated Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Subordinated Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Subordinated Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Subordinated Notes and will not be subordinated to any other Series, Class or Tranche of Notes other than all Senior Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Date that is the Series 2017-1 Senior Principal Payment Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Subordinated Principal Payment Default Date; and

(o) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the Purchaser

(a) ***Initial Purchase***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, the Purchaser shall purchase a Series 2017-1 Subordinated Note in an amount equal to the Series 2017-1 Initial Subordinated Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**. Payments by the Purchaser for such purchase shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(c).

(b) ***Series 2017-1 Maximum Subordinated Principal Amount***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall the Purchaser be required to purchase Series 2017-1 Subordinated Notes in an amount that exceeds the Series 2017-1 Maximum Subordinated Principal Amount.

### 3.2 Delivery

(a) On the Closing Date, Series 2017-1 Subordinated Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture in the name of the Purchaser in an amount equal to the Series 2017-1 Maximum Subordinated Principal Amount.

(b) The Purchaser shall maintain a record of the actual Series 2017-1 Subordinated Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Series 2017-1 Subordinated Principal Amount from time to time.

### 3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Subordinated Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], concurrent with the initial purchase of the Series 2017-1 Senior Notes under the Senior Series 2017-1 Supplemental Indenture, the Issuer shall request that the Purchaser purchase, and the Purchaser shall purchase, a Series 2017-1

Subordinated Note for an initial purchase price equal to the Series 2017-1 Initial Subordinated Principal Amount (the date on which the initial purchase occurs being referred to as the "**Closing Date**") by giving the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Subordinated Notes shall (x) state the Closing Date, (y) state the Series 2017-1 Initial Subordinated Principal Amount, and (z) attach a copy of the irrevocable written notice delivered to the Administrative Agent pursuant to Section **[3.3(a)]** of the Senior Series 2017-1 Supplemental Indenture in connection with the concurrent initial purchase of the Series 2017-1 Senior Notes thereunder; and (ii) on any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount may be increased by an amount not to exceed the product of (i) the Series 2017-1 Senior Increase on such Business Day (each date on which an increase in the Series 2017-1 Subordinated Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase) and (ii) **[ninety-eight]** percent **[(98)]**% (an "**Increase**") by the Issuer providing the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to such Increase Date. Each Increase Notice shall (w) state the Increase Date, (x) state the amount of the increase in the Series 2017-1 Subordinated Principal Amount (an "**Increase Amount**"), (y) state whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"), and (z) attach a copy of the irrevocable written increase notice delivered to the Administrative Agent pursuant to Section **[3.3(a)]** of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Increase proposed to be made thereunder.

(b) The Purchaser shall not be required to increase the Series 2017-1 Subordinated Principal Amount on any Increase Date hereunder unless after giving effect to such Increase Amount, the Series 2017-1 Maximum Subordinated Principal Amount is not exceeded.

(c) The Issuer shall apply amounts paid to it pursuant to Section 3.3(a) in the following order of priority:

(i) **[As to an amount equal to ●% of the amounts paid to pursuant to Section 3.3(a), by deposit to the Program Cash Reserve Account; and] [NTD: Discuss how this account is to be funded.]**

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

### 3.4 Procedure for Decreasing the Series 2017-1 Subordinated Principal Amount

(a) On any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount may be decreased by an amount not to exceed the product of (i) the Series 2017-1 Senior Decrease on such Business Day, and (ii) **[ninety-eight]** percent **[(98)]**% (a "**Decrease**"). Each

Payment Date on which a Decrease in the Series 2017-1 Subordinated Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; and the Issuer shall provide to the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall (x) state the Decrease Date, (y) state the amount of the decrease in the Series 2017-1 Subordinated Principal Amount (a "**Decrease Amount**"), and (z) attach a copy of the irrevocable written decrease notice delivered to the Administrative Agent pursuant to Section **[3.4]** of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Decrease proposed to be made thereunder.

### 3.5 Increases and Reductions of the 2017-1 Maximum Subordinated Principal Amount

(a) If one or more Maximum Purchaser Group Principal Amounts are increased pursuant to Section **[3.5(a)]** of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Subordinated Maximum Principal Amount shall be automatically increased by an amount equal to **[ninety-eight]** percent **[(98)]**% of such aggregate increase to the Maximum Purchaser Group Principal Amounts pursuant to Section **[3.5(a)]** of the Senior Series 2017-1 Supplemental Indenture. **[NTD: Consider whether in senior warehouse supplemental if section 5.01 CPs must be met and new note issued. We are missing mechanic if so.]**

(b) If the Series 2017-1 Maximum Senior Principal Amount is reduced pursuant to Section **[3.5(b)]** of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Maximum Subordinated Principal Amount shall be automatically decreased by an amount equal to **[ninety-eight]** percent **[(98)]**% of such aggregate decrease to the Series 2017-1 Maximum Senior Principal Amount pursuant to Section **[3.5(b)]** of the Senior Series 2017-1 Supplemental Indenture. **[NTD: Consider if new note to be issued. We are missing mechanic if so.]**

### 3.6 Interest; Other Amounts

(a) Interest shall be payable on the Series 2017-1 Subordinated Notes on each Payment Date.

(b) The Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Monthly Interest and the Monthly Other Amounts with respect to the Payment Date.

(c) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Subordinated) for the purposes of Section **[7.04(e)(ix)]** of the Trust Indenture and shall be payable pursuant to Sections **[7.05(b), 7.08(a)(ii) or 8.13(c)]** of the Trust Indenture, as applicable. On each Payment Date, the Monthly Other Amounts shall be payable in respect of the Series 2017-1 Subordinated Notes pursuant to Sections **[7.04(e)(ix) or 8.13(h)]** of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to the Purchaser the Monthly Other Amounts with respect to the Payment Date.

### 3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Subordinated Notes:

(i) for each Payment Date before the Principal Accumulation Date or an Acceleration Event, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date;

(ii) for each Payment Date on or after the Principal Accumulation Date prior to the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date; and

(iii) for each Payment Date following the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the Series 2017-1 Subordinated Principal Amount.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Subordinated Notes. On each Principal Payment Date in respect of the Series 2017-1 Subordinated Notes, the Paying Agent shall pay to the Purchaser the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Subordinated Notes pursuant to Sections [**7.04(e)(x), 7.06(b) or 8.13(i)]** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Subordinated Notes.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and the Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

### 3.9 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income),

franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.9(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**3.10 Increased Costs**

(a) (i) If any Regulatory Change (x) subjects the Purchaser to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or the Purchaser's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to the Purchaser of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of the Purchaser or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of the Purchaser, or credit extended by the Purchaser pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to the Purchaser of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on the Purchaser's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by the Purchaser under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by the Purchaser of a written request therefore to the Issuer, the Purchaser shall be entitled to be paid, such amounts charged to the Purchaser or such amounts to otherwise compensate the Purchaser for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.10(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that the Purchaser may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on the Purchaser's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.10(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the Purchaser, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Purchaser shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) the Purchaser shall not be compensated for any such amount pursuant to this subsection 3.10(a)(ii) relating to any period ending, and of which the Purchaser has had knowledge, more than ninety (90) days prior to the date that the Purchaser provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.10(a)(ii), (III) if, after the payment by the Issuer of any charges or compensation pursuant to this subsection 3.10(a)(ii), either (A) the Issuer requests in writing that the Purchaser re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the the Purchaser determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.10(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) the Purchaser shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.10(a)(ii). The Issuer further acknowledges that any charge

or compensation demanded hereunder may take the form of a monthly charge to be assessed by the Purchaser.

(b) The Purchaser claiming increased amounts described in subsection 3.10(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by the Purchaser for any such increased amounts referred to in subsection 3.10(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of the Purchaser to demand compensation for any amount pursuant to subsection 3.10(a) hereof with respect to any period shall not constitute a waiver of the Purchaser's right to demand compensation with respect to such period.

### 3.11 Acceleration Events

**[NTD: To be conformed with Senior Supplemental Indenture.]**

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Subordinated Notes

On or prior to the initial purchase of Series 2017-1 Subordinated Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Purchaser shall have received:

(i) executed copies of this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Purchaser shall be entitled to conclusively rely until such time as the Purchaser receives a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Purchaser;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Purchaser;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement and the Change of Law Process Agreement in form and substance satisfactory to the Purchaser;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Purchaser may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Subordinated Notes shall have been duly issued in accordance with the Trust Indenture and the Purchaser shall have received its Series 2017-1 Subordinated Note registered in its name or a nominee in a face amount equal to the Series 2017-1 Maximum Principal Subordinated Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

### 4.2 Conditions Precedent to each Increase under Series 2017-1 Subordinated Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Purchaser shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase; and

(c) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Purchaser as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Purchaser as of the Closing Date, and shall be deemed to represent and warrant to the Purchaser on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Purchaser by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 5.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Subordinated Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

### 5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

## ARTICLE 6
## COVENANTS

### 6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement; provided such documents shall be deemed to be delivered hereunder so long as the Purchaser is the Manager.

(b) The Issuer shall provide to the Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect; provided that the Purchaser shall be deemed to have knowledge of such actions, suits or proceedings so long as it is the Manager.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not more than forty-nine percent (49)% of the aggregate outstanding principal amount of all Issuer Funding Obligations (excluding Derivative Funding Obligations).

## ARTICLE 7
## GENERAL

### 7.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that (i) the Issuer may not assign or transfer any of its rights or obligations under this Supplemental Indenture without the prior written consent of the Purchaser; and (ii) the Purchaser may, without the prior written consent of the Issuer, assign or transfer any of its rights or obligations under this Supplemental Indenture in the ordinary course of its business and in accordance with applicable law to another Person (each, a "**Transferee**") pursuant to a transfer supplement, substantially in the form of Exhibit ■ (the "**Transfer Supplement**").

(b) The Issuer authorizes the Purchaser to disclose to any Transferee and any prospective Transferee any and all financial information in the Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to the Purchaser by the Issuer or the Manager.

(c) Notwithstanding any other provision of this Supplemental Indenture to the contrary, the Purchaser may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Subordinated Note and this Supplemental Indenture to secure obligations of the Purchaser to any Person, without notice to or consent of the Issuer; provided that no such pledge or grant of a security interest shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or grantee for the Purchaser as a party hereto.

### 7.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Purchaser. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Purchaser.

### 7.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Purchaser, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows; or to such other address as may be hereafter notified by the respective parties hereto:

Purchaser:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

**7.4 No Waiver: Remedies**

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

**7.5 Entire Agreement**

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

**7.6 Governing Law and Attornment**

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

**7.7 Acknowledgment of Trust Indenture and No Proceedings**

The Purchaser acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

**7.8 Expenses**

The Issuer agrees to pay on demand (a) to the Indenture Trustee and the Purchaser all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Purchaser, with respect thereto; (b) to the Indenture Trustee and the Purchaser, all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket

expenses of counsel with respect thereto; and (c) to the Indenture Trustee and the Purchaser, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Purchaser), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

**7.9 Further Assurances**

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

**7.10 Confidentiality**

(a) The Purchaser covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, the Purchaser shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over the Purchaser; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by the Purchaser; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information; (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to the Purchaser on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by the Purchaser without violating any of the Purchaser's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture, except as the Purchaser may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory

legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the Purchaser of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Subordinated Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

**7.11 Limitation of Liability of Issuer Trustee**

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 7.11, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 7.11 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Subordinated Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

**7.12 Execution in Counterparts**

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

### 7.13 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

**FAIR HYDRO TRUST**, as Issuer, by

**ONTARIO POWER GENERATION INC.**,
not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC.**,
as Purchaser

By: _____
Name:
Title:

By: _____
Name:
Title:

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section **[3.11]** of the Senior Series 2017-1 Supplemental Indenture and the outstanding Dollar Principal Amount of the Series 2017-1 Subordinated Notes have been declared or automatically become due and payable pursuant to Section 3.11.

"**Administrative Agent**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Applicable Margin**" means ■.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.9(a).

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Excluded Taxes**" shall have the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Indenture Trustee**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Issuer Indemnified Person**" is defined in Section 3.8.

"**Issuer Trustee**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Maximum Purchaser Group Principal Amount**" shall have the meaning specified in the Senior Series 2017-1 Supplemental Indenture.

"**Monthly Interest**" shall mean, for any Payment Date, the sum of (A) the sum for each day during such Interest Period of the product of (i) the Series 2017-1 Subordinated Principal Amount on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365, and (B) the Monthly Interest Shortfall; provided that, for the purposes of determining the Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Purchaser may estimate the interest for the remaining days in the Interest Period and provided further, if the actual interest for such days is less than the estimated interest, the Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Monthly Interest Shortfall**" means, for any Payment Date, if the amount in clause (A) of the definition of Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(c), an amount equal to the amount in clause (A) of the definition of Monthly Interest owing to the Purchaser which was unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Other Amounts**" shall mean, for any Payment Date the sum of (a) any amounts payable to the Purchaser hereunder including, without limitation, pursuant to Sections 3.8, 3.9, 3.10 and 7.8; plus (c) the Monthly Other Amounts Shortfall for such Payment Date.

"**Monthly Other Amounts Shortfall**" means, for any Payment Date, if the amount of the Monthly Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(c), an amount equal to the Monthly Other Amounts owing to the Purchaser which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Subordinated Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, **[2021]**.

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Subordinated Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Subordinated Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Subordinated Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Subordinated Principal Payment Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Subordinated Principal Amount.

"**Purchaser**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Recipient**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not

having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Senior Series 2017-1 Supplemental Indenture**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Series 2017-1 Initial Senior Principal Amount**" means the "Series 2017-1 Initial Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.

"**Series 2017-1 Initial Subordinated Principal Amount**" means an amount equal to **[ninety-eight percent (98%)]** of the Series 2017-1 Initial Senior Principal Amount

"**Series 2017-1 Maximum Senior Principal Amount**" means the "Series 2017-1 Maximum Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.

"**Series 2017-1 Maximum Subordinated Principal Amount**" means an amount equal to **[ninety-eight percent (98%)]** of the Series 2017-1 Maximum Senior Principal Amount.

"**Series 2017-1 Senior Decrease**" means, with respect to a Business Day, the sum of all amounts of Decreases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"**Series 2017-1 Senior Increase**" means, with respect to a Business Day, the sum of all amounts of Increases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"**Series 2017-1 Senior Notes**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Series 2017-1 Senior Principal Payment Date**" means ■. **[NTD: the date upon which the Series 2017-1 Senior Notes become due and payable.]**

"**Series 2017-1 Subordinated Note**" means any one of the Floating Rate Variable Funding Subordinated Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Series 2017-1 Subordinated Principal Amount**" means (a) when used with respect to the Closing Date, the Series 2017-1 Initial Subordinated Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Series 2017-1 Subordinated Principal Amount on the immediately preceding Business Day; plus (ii) the Increase Amount on such date; minus (iii) the Decrease Amount on such date; minus (iv) the amount of principal payments made to the Purchaser pursuant to Section 3.7 on such date.

"**Series 2017-1 Subordinated Principal Payment Default Date**" means ■. **[NTD: likely later than the Series 2017-1 Senior Principal Payment Default Date.]**

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with the Purchaser which relates to, or is otherwise available to the Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Acceleration Event or any event which with the giving of notice or the passage of time, or both, could become an Acceleration Event.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 7.1(a).

"**Transferee**" is defined in Section 7.1(b).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

**SCHEDULE B**

**[FORM OF NOTE]**

**SERIES 2017-1 SUBORDINATED NOTE**

●

## SCHEDULE C

## FORM OF INCREASE NOTICE

●

## SCHEDULE D

## FORM OF DECREASE NOTICE

●

~~[~~

**COMPUTERSHARE TRUST COMPANY~~[~~ OF CANADA**

as Issuer Trustee of

~~■~~

**FAIR HYDRO TRUST**

---

# DECLARATION OF TRUST

Made as of ■, 2017

---

## TABLE OF CONTENTS

**Page**


**ARTICLE 1 INTERPRETATION** **1**

1.1 Definitions 1
1.2 Interpretation 5
1.3 Accounting Principles 6
1.4 References to Acts of the Trust 6

**ARTICLE 2 THE TRUST** **6**

2.1 Purpose and Activities of the Trust 6
2.2 Limitation on Certain Activities 7
2.3 Name and Head Office ~~8~~7
2.4 Nature of the Trust 8
2.5 Rights of Unitholders 8

**ARTICLE 3 UNITS** **9**

3.1 Nature of Units 9
3.2 Consideration of Units 9
3.3 No Pre-Emptive Rights 9
3.4 Fractional Units 9
3.5 Allotment and Issue 10
3.6 Prohibited Issuances and Transfers 10
3.7 Liability of Unitholders 11

**ARTICLE 4 REDEMPTION OF UNITS** **12**

4.1 Redemption of Units 12

**ARTICLE 5 RIGHTS AND POWERS OF ISSUER TRUSTEE** **13**

5.1 General Rights and Powers 13
5.2 Acquisition of Assets and Deposit of Funds 13
5.3 Legal Title and Custody 14
5.4 Disposition of Trust Property 14
5.5 Management of Trust Property 14
5.6 Power to Borrow Money and Issue Funding Obligations 14
5.7 Hedging Agreements 15
5.8 Execution of Instruments 15
5.9 Facsimile Signatures 15
5.10 Taxes 15
5.11 Collection 16
5.12 Expenses and Compensation of Issuer Trustee 16
5.13 Allocation 17
5.14 Fiscal Year and Form of Accounts 17
5.15 Power to Contract 17

**TABLE OF CONTENTS**
(continued)

**Page**


5.16 Indemnification 18
5.17 Further Powers 18
5.18 Auditors 19
5.19 Defect in Appointment 19
5.20 Status 19

**ARTICLE 6 REPLACEMENT OF ISSUER TRUSTEE 19**

6.1 Resignation of Issuer Trustee 19
6.2 Removal of Issuer Trustee 20
6.3 Vacancy 20
6.4 Appointment of New Issuer Trustee 20
6.5 Merger, Consolidation and Amalgamation 20
6.6 Vesting in Successor Issuer Trustee 21
6.7 Confidentiality 21
6.8 Right to Disclose 21

**ARTICLE 7 STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS 21**

7.1 Standard of Care 21
7.2 Limitation of Liability of Issuer Trustee 22
7.3 Indemnification of the Issuer Trustee 22
7.4 Reliance upon Advice 23
7.5 Retain Experts 23
7.6 Reliance on Experts 23
7.7 Provisions Regarding Liability 23

**ARTICLE 8 RECORDS 24**

8.1 Records to be Kept 24
8.2 Segregation of Assets 24
8.3 Method of Keeping Records 24
8.4 Annual Financial Statements 24

**ARTICLE 9 MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS 24**

9.1 Annual Meeting 24
9.2 Other Meetings 24
9.3 Quorum and Voting 25
9.4 Written Resolution 25

**ARTICLE 10 AMENDMENT 25**

10.1 Amendment 25
10.2 Automatic Amendment 26

**TABLE OF CONTENTS**
(continued)

**Page**


10.3 Supplemental Declaration of Trust 26

**ARTICLE 11 DISTRIBUTION OF TRUST PROPERTY 26**

11.1 Distributions 26
11.2 Allocation 28
11.3 Payment of Distributions 28
11.4 Legal Rights 29
11.5 Income Tax Matters 29
11.6 Designations ~~29~~**30**
11.7 Withholding Taxes 30

**ARTICLE 12 TERMINATION OF THE TRUST 30**

12.1 Termination 30

**ARTICLE 13 GENERAL 31**

13.1 Irrevocability 31
13.2 Change of Office 31
13.3 Execution of Instruments 31
13.4 Manner of Giving Notice 31
13.5 Taxation Information 31
13.6 Severability ~~31~~**32**
13.7 Governing Law 32
13.8 Language 32

**THIS DECLARATION OF TRUST** is made as of ■, 2017 by ■Computershare Trust Company of Canada, a trust company established under the laws of [Canada] (the "**Issuer Trustee**").

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

**AND WHEREAS** the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

**NOW THEREFORE** the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Adjusted Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Excess Income on Redemption**" has the meaning ascribed thereto in subsection 11.1(2).

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means ~~■~~BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means ~~■~~Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Net Realized Capital Gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**Net Realized Capital Gains of the Trust Allocated on Redemption**" has the meaning ascribed thereto in subsection 4.1(5).

"**New Holder**" has the meaning ascribed thereto in subsection 3.6(1).

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing

Agreement, each Transfer Notice, the Change of Law Protection Agreement and any hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means **Fair Hydro Trust**, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.[1]

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

## 1.2 Interpretation

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have

[1] ~~Note: It is proposed that a single unit of the Trust will be issued to the Indenture Trustee (in addition to units to OPG or a subsidiary of OPG) in order to ensure that OPG or a subsidiary of OPG does not have the capability to cause the Trust to be wound-up.~~

been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

### 1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

### 1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

## ARTICLE 2
## THE TRUST

### 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d) above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

**2.2 Limitation on Certain Activities**

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or

proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

### 2.3 Name and Head Office

The English form of the name of the Trust is "■**Fair Hydro Trust**" and the French form of the name of the Trust is "■". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at ~~[*address of Issuer Trustee*]~~ **100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.**

### 2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

### 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except

as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

## ARTICLE 3
## UNITS

### 3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

### 3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

### 3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

### 3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

### 3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

### 3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to

receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

### 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or

liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

## ARTICLE 4
## REDEMPTION OF UNITS

### 4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the "**Redemption Price**") established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will **satisfy the Redemption Price**, subject to compliance with any regulatory requirements, ~~distribute~~**by either issuing a promissory note to the Unitholder, which note shall have a principal amount equal to the Redemption Price and such other terms as is determined at the time of issuance by the Issuer Trustee, or by distributing** to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. ~~The~~ **In the event that property is distributed *in specie*, the** amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the "**Adjusted Redemption Price**").

(4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the

Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such *in specie* distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the "**Net Realized Capital Gains of the Trust Allocated on Redemption**"). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

## ARTICLE 5
## RIGHTS AND POWERS OF ISSUER TRUSTEE

### 5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. **The Issuer Trustee shall exercise the functions of the trustee of the Trust in Ontario, Canada.** For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

### 5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

### 5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

### 5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

### 5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

### 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding

Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

**5.7 Hedging Agreements**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

**5.8 Execution of Instruments**

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

**5.9 Facsimile Signatures**

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

### 5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

### 5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

### 5.12 Expenses and Compensation of Issuer Trustee

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust

Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

### 5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

### 5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

### 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and

any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

**5.16 Indemnification**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

**5.17 Further Powers**

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

**5.18 Auditors**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

**5.19 Defect in Appointment**

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

**5.20 Status**

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

## ARTICLE 6
## REPLACEMENT OF ISSUER TRUSTEE

### 6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

### 6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

### 6.3 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to

Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

### 6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

### 6.5 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

### 6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

### 6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

### 6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

## ARTICLE 7
## STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

### 7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty, the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

### 7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply

with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

### 7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

### 7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

### 7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

### 7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

### 7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

## ARTICLE 8
## RECORDS

### 8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

### 8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

### 8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

### 8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

## ARTICLE 9
## MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

### 9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

### 9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

### 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

### 9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such

resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

## ARTICLE 10
## AMENDMENT

### 10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

### 10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

### 10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

## ARTICLE 11
## DISTRIBUTION OF TRUST PROPERTY[1]

### 11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the "**Excess Income on Redemption**"), the Issuer Trustee shall declare to be payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.

(3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(4) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the

[1] **Subject to PILs exemption.**

"SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(1) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

**11.2 Allocation**

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);

(b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(1) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

**11.3 Payment of Distributions**

(1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by

the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

### 11.4 Legal Rights

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

### 11.5 Income Tax Matters

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

### 11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

### 11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions **or other amounts** payable ~~to a Unitholder~~**under this Declaration of Trust** amounts required by law to be deducted or withheld from such ~~Unitholder's~~ distributions **or payments**, whether such distributions **or payments** are **satisfied** in the form of cash, ~~a~~**cheque,** promissory note, additional Units or

otherwise. To the extent that any amounts are deducted or withheld from payments **made by cash, cheque or wire transfer, including those** described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to ~~a Unitholder~~**the recipient of the payment** in respect of the distribution **or other amount** payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution **or payment that is satisfied in a manner other than cash, cheque or wire transfer, including those** described in subsections **4.1(3),** 4.1(5) or ~~11.1(2), or elects to pay a distribution in the manner contemplated in subsection~~ 11.3(3), the ~~Unitholder~~**recipient of the payment** shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

## ARTICLE 12
## TERMINATION OF THE TRUST

### 12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust, including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

## ARTICLE 13
## GENERAL

### 13.1 Irrevocability

The Trust shall be irrevocable.

### 13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

### 13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

### 13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

### 13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

### 13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

### 13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation,

performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

### 13.8 Language

*Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.* The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**IN WITNESS WHEREOF** the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

**~~[~~COMPUTERSHARE TRUST COMPANY~~]~~ OF CANADA**,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:07:04 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24318715/1 |
| Description | #24318715v1<TorysAtWork> - Declaration of Trust - Fair Hydro - RATING AGENCIES |
| Document 2 ID | file://C:\Users\bsaulnie\Desktop\Declaration of Trust - Fair Hydro.DOCX |
| Description | Declaration of Trust - Fair Hydro |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 39 |
| Deletions | 29 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 68 |

# MANAGEMENT AGREEMENT

between

~~■~~
**FAIR HYDRO TRUST**
as Issuer

- and -

**ONTARIO POWER GENERATION INC.**
as Manager

Acknowledged and Accepted by

~~■~~
**BNY TRUST COMPANY OF CANADA**
as Indenture Trustee

**Dated as of ■, 2017**

## TABLE OF CONTENTS


**ARTICLE 1**
**INTERPRETATION** ..... **2**
1.1 Definitions ..... 2

**ARTICLE 2**
**INTRODUCTORY PROVISIONS** ..... **~~5~~4**
2.1 Sections and Headings ..... ~~5~~4
2.2 Extended Meanings ..... ~~5~~4
2.3 References to Acts of the Issuer or the Issuer Trustee ..... 5

**ARTICLE 3**
**APPOINTMENT OF THE MANAGER** ..... **5**
3.1 Appointment and Authority of the Manager ..... 5

**ARTICLE 4**
**DUTIES AND OBLIGATIONS OF THE MANAGER** ..... **6**
4.1 Program Agreements ..... 6
4.2 Issuer Investment Interest ..... **9**
**4.3 Collection of Clean Energy Adjustments** ..... 10
~~4.3~~**4.4** Investment Interest Records ..... 11
~~4.4~~**4.5** Payment of Other Issuer Fees and Expenses ..... 12
~~4.5~~**4.6** Delegation ..... 12
~~4.6~~**4.7** Annual Compliance Certificates ..... ~~13~~**12**
~~4.7~~**4.8** Acknowledgment of Duties as Financial Services Manager ..... 13

**ARTICLE 5**
**OTHER PROVISIONS RELATING**
**TO THE DUTIES AND COMPENSATION** ..... **13**
5.1 Standard of Care ..... 13
5.2 Compliance with Program Agreements; Conformity with Law ..... 14
5.3 Liabilities ..... 14
5.4 Compensation of the Manager ..... 15
5.5 Compensation of the Issuer ..... 15
5.6 Indemnification by Manager ..... 15
5.7 Contracting with Itself and Affiliates ..... 17

**ARTICLE 6**
**REPRESENTATIONS AND WARRANTIES** ~~17~~18
6.1 Representations of the Issuer ~~17~~18
6.2 Representations of the Manager ~~17~~18

**ARTICLE 7**
**TERMINATION AND RESIGNATION** ~~17~~18
7.1 Termination ~~17~~18

**ARTICLE 8**
**MISCELLANEOUS** 18
8.1 **Acknowledgement of Indenture** 18
**8.2** Appointment of Manager as Attorney-in-Fact ~~18~~19
~~8.2~~**8.3** Amendments and Waivers ~~18~~19
~~8.3~~**8.4** Withholding Rights ~~18~~19
~~8.4~~**8.5** No Petition ~~19~~20
~~8.5~~**8.6** Notice ~~19~~20
~~8.6~~**8.7** Recourse to Issuer Trustee and the Issuer ~~20~~21
~~8.7~~**8.8** Severability ~~20~~21
~~8.8~~**8.9** Execution of Counterparts; Electronic Delivery ~~20~~21
~~8.9~~**8.10** Governing Law ~~20~~21
~~8.10~~**8.11** Grant of Security Interest to Indenture Trustee ~~20~~22

**EXHIBIT**

Exhibit A – Annual Compliance Certificate

# MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

■**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**ONTARIO POWER GENERATION INC.**, a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

**[INDENTURE TRUSTEE]BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

**WHEREAS** the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

**AND WHEREAS** Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

**AND WHEREAS** the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

**AND WHEREAS** the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, ~~those~~**its** rights ~~and obligations set forth in Sections 4.1(a)(vii), 4.1(a)(xx), 4.1(a)(xxiii), 4.3(a), 4.7(d), 4.7(e), 5.6, 7.1, 8.2(b) and 8.10 hereof~~**set forth in this Agreement**;

**AND WHEREAS** the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this Agreement, as amended, supplemented, modified, ~~restated or~~ replaced **or amended and restated** from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

**"Electricity Vendor" has the meaning ascribed to the term "electricity vendor" in the Act;**

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital ~~continued~~**amalgamated** under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

**"Indenture Indemnified Losses" has the meaning ascribed to such term in Section 5.6(b);**

**"Indenture Indemnified Person" means the Indenture Trustee and its officers, directors and employees;**

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

"**Management Fees**" means the fees ~~payable to the Manager, as set out in the applicable fee letter to be issued on an annual basis or more frequently as the Issuer and the Manager may determine~~**established and charged by the Financial Services Manager in accordance with section 19(3) of the Act and the Regulations and approved by the Board in accordance with section 19(4) of the Act**;

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO ~~and acknowledged and accepted by the Indenture Trustee~~, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"~~**Program Agreements**" means the Indenture, each Supplemental Indenture, the Declaration of Trust, this Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements and Note Purchase Agreements in effect at such time and all other documents and certificates delivered in connection therewith;~~**Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding;**

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means ~~the~~**Ontario Regulation 206/17: General, together with any other** regulations promulgated under the Act;

"**Servicer CEA ~~Collections~~Receipts**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

## ARTICLE 2
## INTRODUCTORY PROVISIONS

### 2.1 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

### 2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

## ARTICLE 3
## APPOINTMENT OF THE MANAGER

### 3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. **The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.**

## ARTICLE 4
## DUTIES AND OBLIGATIONS OF THE MANAGER

### 4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund

schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or

the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, ~~Liquidity~~ Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of **the Indenture and** any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

**4.2 Issuer Investment Interest**

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between ~~the~~ Servicer CEA ~~Collections~~**Receipts** and the Clean Energy Adjustment;

(e) instituting any ~~action or proceeding~~**Proceeding** necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act**, the Regulations** or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any ~~action or proceeding~~**Proceeding** necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

**4.3 Collection of Clean Energy Adjustments**

**The Manager will as agent for and on behalf of the Issuer perform the following in connection with the collection of Clean Energy Adjustments:**

**(a) review each report delivered by the IESO under Section 3.4(b) of** the Master Transfer and Servicing Agreement **and make commercially reasonable efforts to resolve the failures and discrepancies which have not been remedied or adequately explained by Electricity Vendors;**

**(b) institute any Proceeding necessary to compel performance by the Electricity Vendors of any of their obligations or duties under the Act and the Regulations including with respect to the invoicing, collection, receipt, remittance and reporting in respect of Clean Energy Adjustments; and**

**(c) as the Manager determines necessary, review or caused to be reviewed, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that if there is evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Manager shall promptly review or cause to be reviewed the records of such Electricity Vendor as the Manager deems reasonably necessary to cause compliance by such Electricity Vendor.**

**4.4 ~~4.3~~ Investment Interest Records**

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee, as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section ~~4.3~~**4.4** shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section ~~4.3~~**4.4**.

(c) Nothing in this Section ~~4.3~~**4.4** shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section ~~4.3~~**4.4**, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

**~~4.4~~ Payment of Other Issuer Fees and Expenses** **4.5**

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

## 4.6 ~~4.5~~ Delegation

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

## 4.7 ~~4.6~~ Annual Compliance Certificates

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

## 4.8 ~~4.7~~ Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

## ARTICLE 5
## OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

### 5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

### 5.2 Compliance with Program Agreements; Conformity with Law

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

### 5.3 Liabilities

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the ~~standard of care required under Section 5.1~~**Standard of Care**.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

**5.4 Compensation of the Manager**

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, **and so long as the Financial Services Manager is also the Manager, all services provided and duties performed by the Financial Services Manager,** the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements, the Management Fees. The Management Fees are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

**5.5 Compensation of the Issuer**

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the

amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

**5.6 Indemnification by Manager**

**(a)** The Manager ~~agrees to~~**shall** indemnify~~,~~ **and** defend and hold harmless the Issuer from and against**,** any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the ~~standard of care required under Section 5.1~~**Standard of Care**, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Issuer.~~ It is, however, expressly understood that the Manager is not agreeing to indemnify or hold the Issuer harmless with respect to any of the following:~~

**(b)** **The Manager shall indemnify each Indenture Indemnified Person and defend and hold harmless each such Indenture Indemnified Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "Indenture Indemnified Losses")** imposed on, incurred by or asserted against **such Indenture Indemnified Person, as a result of (i) the failure of the Manager to perform its covenants and other obligations under this Agreement; or (ii) the breach by the Manager of any of its representations or warranties under this Agreement and, except to the extent of Indenture Indemnified Losses resulting from the willful** misconduct, bad faith or gross negligence of **such Indenture Indemnified Person seeking indemnification hereunder; provided that, in each case, the Manager shall not be required to indemnify an Indenture Indemnified Person for any amount paid or payable by such Indenture Indemnified Person in the settlement of any Proceeding or investigation without the written consent of the Manager, which consent shall not be unreasonably withheld. Promptly after receipt by an Indenture Indemnified Person of notice of the commencement of any Proceeding or investigation, such Indenture Indemnified Person shall, if a claim in respect thereof is to be made against the Manager under this Section 5.6(b), notify the Manager in writing of the commencement thereof. Failure by an Indenture Indemnified Person to so notify the Manager shall relieve the Manger from the obligation to indemnify and hold harmless such Indenture Indemnified Person under this Section 5.6(b) only to the extent that the Manager suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 5.6(b), the Manager shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indenture Indemnified Person, the defence of any such Proceeding or investigation (in which case the Manager shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indenture**

**Indemnified Person except as set forth below); provided, that the Indenture Indemnified Person shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the Manager's election to assume the defence of any Proceeding or investigation, the Indenture Indemnified Person shall have the right to employ separate counsel, and the Manager shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indenture Indemnified Person and the Manager and the Indenture Indemnified Person shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the Manager, (ii) the Manager shall not have employed counsel reasonably satisfactory to the Indenture Indemnified Person to represent the Indenture Indemnified Person within a reasonable time after notice of the institution of such action, or (iii) the Manager authorizes the Indenture Indemnified Person to employ separate counsel at the expense of the Manager. Notwithstanding the foregoing, the Manager shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indenture Indemnified Persons other than one local counsel, if appropriate. The Manager will not, without the prior written consent of the Indenture Indemnified Person, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 5.6(b) (whether or not the Indenture Indemnified Person is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indenture Indemnified Person from all liability arising out of such claim or Proceeding.**

**(c)** **Indemnification under Section 5.6(b) shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank pari passu with other general, unsecured obligations of the Manager.**

**(d)** **Notwithstanding anything contained in this Agreement, it is** expressly understood that the Manager is not agreeing to indemnify or hold the Issuer **or any Indenture Indemnified Person** harmless with respect to any of the following:

~~(a)~~ **(i)** payments due on Issuer Funding Obligations or other amounts borrowed;

**(i)** ~~(b)~~ any breach or failure to perform on the part of any other third party under any Program Agreement;

**(ii)** ~~(c)~~ any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

~~(d) any amount for which the Issuer agrees to indemnify the Manager hereunder;~~

(iii) ~~(e)~~ any liability of the Issuer **or any Indenture Indemnified Person** accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(iv) ~~(f)~~ any losses of the Issuer **or any Indenture Indemnified Person** arising due to risks inherent in the Issuer Investment Interest; ~~or~~

(v) ~~(g)~~ any statements or certificates provided by the Issuer to the effect that ~~(i)~~ **(X)** any Funding Obligation is consistent with the Financing Plan~~,~~ or ~~(ii)~~ **(Y)** the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period**; or**

(vi) **any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision**.

**(e)** ~~It is further~~**Notwithstanding anything contained in this Agreement, it is expressly** understood that the Manager is not agreeing to indemnify or hold harmless**: (i) the Issuer with respect to any amount for which the Issuer agrees to indemnify the Manager hereunder; or (ii)** the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

~~The Manager agrees to indemnify, defend and hold harmless the Indenture Trustee from and against any and all liabilities which may be imposed on, incurred by or asserted against the Indenture Trustee as the result of any wilful misconduct or gross negligence relating to the maintenance and custody by the Manager, as custodian, of the Investment Interest Records; provided that (a) the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Indenture Trustee and (b) the Manager shall not be liable for any portion of any liability resulting from the wilful misconduct, bad faith or gross negligence of the Indenture Trustee.~~

## 5.7 Contracting with Itself and Affiliates

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

### 6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that (a) the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and (b) this Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

### 6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (a) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager, (b) this Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (c) it is ~~not~~ a ~~non~~ resident of Canada for purposes of the *Income Tax Act* (Canada).

## ARTICLE 7
## TERMINATION AND RESIGNATION

### 7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and ~~8.3~~**8.5**) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30th day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Acknowledgement of Indenture

**The Manager (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the**

**Indenture, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in the Indenture and (iii) appoints the Indenture Trustee as its agent for any and all such purposes.**

**8.2** ~~**8.1**~~ **Appointment of Manager as Attorney-in-Fact**

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

**8.3** ~~**8.2**~~ **Amendments and Waivers**

(a) Subject to Section ~~8.2~~**8.3**(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

**8.4** ~~8.3~~ **Withholding Rights**

The parties hereto shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.5** ~~8.4~~ **No Petition**

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

**8.6** ~~8.5~~ **Notice**

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

~~■~~
~~■~~
~~■~~
~~■~~

**Fair Hydro Trust**
**c/o Ontario Power Generation Inc.**
**700 University Avenue**
**Toronto, Ontario**
**M5G 1X6**

Email: ■
Attention: ■

**with a copy to:**

**Computershare Trust Company of Canada**
**100 University Avenue, 11th Floor**
**Toronto, Ontario**
**M5J 2Y1**

**Email:** ■
**Attention:** ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

**8.7 ~~8.6~~ Recourse to Issuer Trustee and the Issuer**

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

**8.8 ~~8.7~~ Severability**

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

**8.9 ~~8.8~~ Execution of Counterparts; Electronic Delivery**

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by

electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

**8.10** ~~**8.9**~~ **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**8.11** ~~**8.10**~~ **Grant of Security Interest to Indenture Trustee**

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

***[Remainder of page intentionally left blank.]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**FAIR HYDRO TRUST, by its sole trustee, COMPUTERSHARE TRUST COMPANY OF CANADA**

**as Issuer**

By:
Name:
Title:

By:
Name:
Title:

**ONTARIO POWER GENERATION INC.**
**as Manager**

By:
Name:
Title:

By:
Name:
Title:

**ACKNOWLEDGED AND ACCEPTED:**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

By:
Name:
Title:

By:
Name:
Title:

**EXHIBIT A**

**ANNUAL COMPLIANCE CERTIFICATE**

**TO**: ■Computer Share Trust Company of Canada, (the "**Issuer Trustee**") in its capacity as issuer trustee of ■Fair Hydro Trust (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

**ONTARIO POWER GENERATION INC.**

**as Manager**

By:
Name:
Title:

By:
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:03:39 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24325449/1 |
| Description | #24325449v1<TorysAtWork> - Fair Hydro - Management Agreement (RA Version) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24325449/6 |
| Description | #24325449v6<TorysAtWork> - *Fair Hydro -- Management Agreement |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 133 |
| Deletions | 115 |
| Moved from | 5 |
| Moved to | 5 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 258 |

# MASTER TRANSFER AND SERVICING AGREEMENT

between

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST
as Issuer

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
as Transferor and Servicer

**Dated as of ■, 2017**

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION** **2**
1.1 Definitions 2
1.2 Sections and Headings 7
1.3 Extended Meanings 7

**ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET** **8**
2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset 8
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset 9

**ARTICLE 3 ROLE OF THE SERVICER** **11**
3.1 Designation of Servicer 11
3.2 Forecasts and Other Information 11
3.3 Clean Energy Adjustments and Electricity Vendors 11
3.4 Reporting 13
3.5 Remittances 14
3.6 **Reimbursement of Servicer** **14**
**3.7** Limits to Obligations 14
~~3.7~~**3.8** Servicing and Maintenance Standards 15
~~3.8~~**3.9** Appointments 15
~~3.9~~**3.10** Term 16
~~3.10 Resignation of Servicer~~ ~~16~~
3.11 Mergers 16
3.12 The IESO Not to Resign as Servicer 17
3.14 IESO Security for CEA Remittances ~~18~~**17**

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO** **18**
4.1 Representations and Warranties 18
4.2 Survival 20

**ARTICLE 5 COVENANTS OF THE IESO** **20**
5.1 Existence 20
5.2 No Transfer or Liens 20
5.3 Notice of Liens ~~21~~**20**
5.4 Compliance with Law ~~21~~**20**
5.5 Covenants Related to the Investment Interest 21
5.6 Non-petition Covenants 21
5.7 Disclosure ~~22~~**21**
5.8 Further Assurances 22
5.9 Access to Certain Records and Information 22
5.10 Maintenance of Operations 22
~~5.11 Acknowledgement of Indenture~~ ~~22~~

**TABLE OF CONTENTS**
(continued)

**Page**


**ARTICLE 6 IESO INDEMNITIES** **22**
6.1 Liability of the IESO; Indemnities 22

**ARTICLE 7 SERVICER DEFAULT** **24**
7.1 Servicer Default 24
7.2 Appointment of Successor Servicer ~~26~~**25**
7.3 Waiver of Past Defaults 26
7.4 Notice of Servicer Default ~~27~~**26**
7.5 Cooperation with Successor Servicer ~~27~~**26**

**ARTICLE 8 MISCELLANEOUS** ~~27~~**26**
8.1 Amendment ~~27~~**26**
8.2 Withholding Rights 27
8.3 No Partnership 27
8.4 Notices ~~28~~**27**
8.5 Assignment 28
8.6 Limitations on Rights of Third Parties 28
8.7 Severability ~~29~~**28**
8.8 Separate Counterparts; Electronic Delivery ~~29~~**28**
8.9 Governing Law ~~29~~**28**
8.10 Grant of Security Interest to Indenture Trustee ~~29~~**28**
8.11 Limitation of Liability of the Issuer Trustee 29
8.12 Waivers 30


**EXHIBIT**


Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly Carrying Costs Statement

# MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

**AND WHEREAS**, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

**AND WHEREAS** the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

**AND WHEREAS** the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

**AND WHEREAS** in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means ■**BNY Trust Company of Canada**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means ~~■~~**Fair Hydro Trust**, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means a rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section ~~3.9~~**3.10**;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

### 1.2 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

## ARTICLE 2
## TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

### 2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by ~~bank~~ wire transfer or ~~bank~~ electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

**2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset**

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO

contained in this Agreement shall have occurred **and** be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

## ARTICLE 3
## ROLE OF THE SERVICER

### 3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in ~~this Agreement~~**Section 3.6** or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith. ~~The Servicer agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.~~

### 3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a)**, which information shall be provided on a non-reliance basis other than with respect to the use thereof in relation to the duties, obligations**

**or rights of the Issuer or the Manager pursuant to the Act and the Regulations**; and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, ~~that is in the possession or control of the Transferor or~~ which is **reasonably** available ~~on request~~ to the Transferor **directly or upon request**, can lawfully be provided and can be provided without incurring material incremental expense.

**3.3 Clean Energy Adjustments and Electricity Vendors**

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments**, make commercially reasonable efforts to cause each Electricity Vendor to**:

(i) ~~provide guidance to the Electricity Vendors with respect to their obligations under the Act to~~ establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) ~~provide~~**settle** a ~~suggested~~ form of Electricity Vendor Billing Period Report to be used by such Electricity ~~Vendors;~~ **Vendor;**

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to ~~such forms and guidance~~**any of the foregoing matters**.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d)~~, and such other discrepancies as may be agreed by the parties hereto, acting reasonably~~;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report**,**

**(iv) that delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer**, or

**(v)** ~~(iv)~~ that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

~~in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;~~

**and attempt to resolve the applicable issue; and**

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

**3.4 Reporting**

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) ~~Report~~**report** monthly to the Issuer any ~~failure on the part of Electricity Vendors to deliver, remit or certify~~**matters** referred to in **Section 3.3**(j~~)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the~~**) which have not been resolved and any** explanation provided therefor by the Electricity Vendor~~.~~**;**

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

**3.5 Remittances**

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

**3.6 Reimbursement of Servicer**

**The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered or recoverable by the Servicer pursuant to sections 25(1) and 25.1 of the *Electricity Act, 1998*, which direct costs the IESO shall have no obligation to seek recovery for under sections 25(1) and 25.1 of the *Electricity Act, 1998*; provided, however, that this Section 3.6 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.**

**3.7 ~~3.6~~ Limits to Obligations**

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree **that** the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section ~~3.6~~**3.7**.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO~~;~~**.**

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, **or to establish a segregated account into which** Electricity Vendor CEA Collections **are to be deposited,** and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO ~~shall~~**is** not ~~be~~ responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such

payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor~~.~~ **and any other reporting in the Electricity Vendor Billing Period Report.**

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

**3.8 ~~3.7~~ Servicing and Maintenance Standards**

Subject to Section ~~3.6~~**3.7**, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

**3.9 ~~3.8~~ Appointments**

The Servicer may at any time appoint **OPG or** any **other** Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that **in respect of the appointment of a Person other than OPG,** the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of **OPG or** such **other** Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of **OPG or** any **other** such Person shall be as agreed between the Servicer and **OPG or** such **other** Person from time to time, and the

Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section ~~3.10~~**3.12**.

**3.10** ~~**3.9**~~ **Term**

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

~~**3.10 Resignation of Servicer**~~

~~The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.~~

**3.11 Mergers**

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer

substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

### 3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

### 3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

### 3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF THE IESO

### 4.1 Representations and Warranties

Subject to Section ~~3.6~~3.7, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

**4.2 Survival**

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

## ARTICLE 5
## COVENANTS OF THE IESO

### 5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

### 5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

### 5.3 Notice of Liens

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

### 5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

### 5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

## 5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

## 5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

## 5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

### 5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

### 5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

## ARTICLE 6
## IESO INDEMNITIES

### 6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure

by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section ~~3.10~~**3.12** of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

## ARTICLE 7
## SERVICER DEFAULT

### 7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

**7.2 Appointment of Successor Servicer**

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the

Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

**7.3 Waiver of Past Defaults**

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

**7.4 Notice of Servicer Default**

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

**7.5 Cooperation with Successor Servicer**

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

## ARTICLE 8
## MISCELLANEOUS

**8.1 Amendment**

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition, such satisfaction to be confirmed by the Issuer at

the time of such amendment. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

**8.2 Withholding Rights**

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.3 No Partnership**

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

**8.4 Notices**

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

~~[Financing Entity]~~Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

**8.5 Assignment**

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

**8.6 Limitations on Rights of Third Parties**

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**8.7 Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## 8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

## 8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## 8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

## 8.11 Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the

Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

**8.12 Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By:
Name:
Title:

By:
Name:
Title:

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor and Servicer**

By:
Name:
Title:

By:
Name:
Title:

**EXHIBIT A**

**FORM OF TRANSFER NOTICE**

See attached

**TRANSFER NOTICE**

TO: ~~[FINANCING ENTITY]~~**Fair Hydro Trust**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between ~~[FINANCING ENTITY]~~**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer **or electronic funds transfer** in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by ~~bank~~ wire **transfer or electronic funds** transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

~~[FINANCING ENTITY]~~**FAIR HYDRO TRUST**, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
**as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

**EXHIBIT B**

**FORM OF MONTHLY REPORT**

[**NTD: form to be settled]**

**EXHIBIT C**

**FORM OF MONTHLY CARRYING COSTS STATEMENT**

See Attached

## MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
**[Address]**

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between ~~**[FINANCING ENTITY]**~~**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer **or electronic funds transfer** to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

**[NTD: Wire transfer instructions to be provided by OPG.]**

DATED this ■ day of ■, 20■.

~~[FINANCING ENTITY]~~**FAIR HYDRO TRUST**, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:33:00 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Blackline Against\MTSA (November 7th Rating Agency Draft).DOCX |
| Description | MTSA (November 7th Rating Agency Draft) |
| Document 2 ID | file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp54bc\Master Transfer and Servicing Agreement.docx |
| Description | Master Transfer and Servicing Agreement |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 91 |
| Deletions | 86 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 179 |

# ~~FIRST [~~SENIOR ~~NOTES~~SERIES [2017-1]
# SUPPLEMENTAL INDENTURE

**between**

**~~[ISSUER]~~FAIR HYDRO TRUST**

**by**

**~~●~~ COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**~~●~~BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% SENIOR NOTES DUE ● ~~(SENIOR NOTES~~, SERIES 2017-1~~)~~**
**OF ~~[ISSUER]~~FAIR HYDRO TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION 1
1.1 Definitions 1
1.2 Interpretation 1
1.3 Application of this Supplemental Indenture 2

ARTICLE 2 SERIES 2017-1 SENIOR NOTES 2
2.1 Creation of Series 2017-1 Senior Notes 2
2.2 Principal Terms 2
2.3 Delivery 3
2.4 Payment of Interest 3
2.5 Payment of Principal ~~3~~4
2.6 [Redemption and Repurchase 4
2.7 Indemnification by the Issuer 4
2.8 Taxes 5
2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes 6
2.10 Acceleration Events 7
[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.] 7

ARTICLE 3 REPRESENTATIONS AND WARRANTIES ~~6~~7
3.1 Representations and Warranties of the Issuer ~~6~~7
3.2 Survival 7

ARTICLE 4 GENERAL 7
4.1 Acceptance of Trust 7
4.2 Confirmation of Trust Indenture 7
4.3 Indenture Trustee Not Bound to Act ~~7~~8
4.4 Successor and Assigns ~~7~~8
4.5 Specified Creditors 8
4.6 Waiver 8
4.7 Notice 8
4.8 No Waiver: Remedies 8
4.9 Entire Agreement ~~8~~9
4.10 Governing Law and Attornment ~~8~~9
4.11 Expenses 9
4.12 Further Assurances 9
4.13 Limitation of Liability of Issuer Trustee 9
4.14 Execution in Counterparts 10
4.15 Delivery of Executed Copies 10

**TABLE OF CONTENTS**
(continued)

**Page**

# ●% SENIOR NOTES DUE ● ~~(SENIOR NOTES~~, SERIES ~~2007~~2017-1~~)~~

**THIS ~~FIRST (~~SENIOR NOTES~~)~~ SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between ●Computershare Trust Company of Canada in its capacity as trustee of Fair Hydro Trust, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and ●BNY **Trust Company of Canada**, a trust company existing under the laws of ~~(~~Canada~~)~~ (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ●, ~~(~~Series 2017-1~~)~~ (the "**Series 2017-1 Senior Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are

applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 SENIOR NOTES

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "●**% Senior Notes due ●, ~~(~~Series 2017-~~1)~~ 1.**"

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be ~~a Series of~~ Senior Notes ~~as contemplated by the Trust Indenture;~~ and will not be subordinated to any other **Class, Series or Tranche of Notes;**

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

~~(h) be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;~~

**(h)** ~~(i)~~ be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

**(i)** ~~(j)~~ bear interest at a rate of ●% per annum;

(j) ~~(k)~~ accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) ~~(l)~~ have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on ~~●~~ ~~and~~ ~~●~~the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing ~~●~~with the Payment Date occurring in the month of [April/October], 2018 in respect of the Series 2017-1 Senior Notes issued prior to such date ~~**[NTD: Interest Payment Dates to be considered in context of model]**~~;

~~(m) [have an initial interest payment in the amount of $● per $1,000 principal amount payable on ●, 2018;]~~

(l) ~~(n)~~ mature on, and have ● [NTD: select a Payment Date], as their sole Principal Payment ~~Due~~ Date;

(m) ~~(o)~~ have ● as their Principal Payment Default Date;

(n) ~~(p)~~ have ● as their Principal Accumulation ~~Commencement~~ Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

| Payment Date | Principal Accumulation Amount |
|---|---|
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Principal Payment Date | $● |

(p) ~~(q)~~ have a Record Date for each Interest Payment Date that is the ~~●~~last day of the calendar month preceding each Interest Payment Date;

(q) ~~(r)~~ **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) ~~(s)~~ **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

### 2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

### 2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Senior Notes) will ~~(i)~~ on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date~~, or (ii) on the day that is two Business Days before each Interest Payment Date, forward or cause to be forwarded to the registered address of each holder of a Series 2017-1 Senior Note as of the Record Date a cheque for such interest, less any taxes required by law to be deducted or withheld, payable to the order of such holder~~. The payment by such wire transfer ~~or forwarding of such cheque~~ will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid) ~~unless any such cheque is not paid on presentation~~. Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

### 2.5 Payment of Principal

~~[On the] [At least one Business Day prior to the]~~By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

### 2.6 [Redemption and Repurchase

**[NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

**2.7 Indemnification by the Issuer**

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer ~~indemnified person~~**Indemnified Person** by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer ~~indemnified person~~**Indemnified Person** or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

**2.8 Taxes**

~~**[NTD: Subject to tax review]**~~

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of~~, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**")~~ **Taxes**, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other ~~taxes~~**Taxes** based on or measured by the net income of any ~~Series 2017-1 Noteholder (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**"))~~**person legally entitled to receive such payments (each a "Recipient")** as a result of a present or former connection between the ~~recipient~~**Recipient** and the jurisdiction of the ~~governmental~~

~~authority~~**Governmental Authority** imposing such ~~tax~~**Taxes** (other than any such connection arising solely from the ~~recipient~~**Recipient** having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); ~~and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii),~~**(ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("FATCA"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "AEOI Legislation"); and (iii)** any interest, penalties and additions to ~~tax~~**Taxes in respect of (i) and (ii**) (all such excluded ~~taxes~~**Taxes** being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a ~~recipient~~**Recipient** hereunder, the amounts so payable to the ~~recipient~~**Recipient** shall be increased, and the ~~recipient~~**Recipient** shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the ~~recipient~~**Recipient** (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. ~~Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase.~~ Whenever any Taxes are payable on or with respect to amounts distributed to a ~~recipient~~**Recipient**, as promptly as possible thereafter the Issuer shall send to such ~~recipient~~**Recipient** a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to ~~U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("FATCA") if the recipient of such payment~~**withholding Taxes under any AEOI Legislation if the Recipient** were to fail to comply with the applicable reporting requirements of ~~FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient~~**any AEOI Legislation, such Recipient** shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law ~~(including as prescribed by Section 1471(b)(3)(C)(i) of the Code)~~ and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with ~~their~~**its** obligations under ~~FATCA~~**any AEOI Legislation** and to determine that such ~~recipient~~**Recipient** has complied with ~~it's~~**its** obligations under ~~FATCA~~**any AEOI Legislation,** or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a ~~recipient~~**Recipient** expires or becomes obsolete or inaccurate in any respect, the ~~recipient~~**Recipient** shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a ~~recipient~~**Recipient** is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim

such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

### 2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be **in** compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

**(d) The Series 2017-1 Senior Notes will have been rated [AAA(sp)] by DBRS and [Aaa(sp)] by Moody's.**

### 2.10 Acceleration Events

**[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]**

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the ~~initial~~ purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all ~~tax~~**Tax** returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material ~~taxes~~**Taxes**, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name ~~and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes~~;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; **and**

(f) ~~all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;~~ **to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.**

~~(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and~~

~~(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.~~

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such

circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The ~~Issuer and the~~ Indenture Trustee (on behalf of the Series 2017-1 Noteholders) ~~acknowledge~~**hereby acknowledges** and ~~agree~~**agrees** that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section ~~7.06~~**[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section ~~8.15~~**[8.14]** (Limited Recourse) and Section ~~17.01~~**[16.01]** (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as

specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ~~●~~**Computershare** Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or

other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this ~~Trust~~**Supplemental** Indenture as of the date first above written.

●**FAIR HYDRO TRUST**, by ~~● **TRUST COMPANY OF CANADA**, as Issuer Trustee~~

**ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

●**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

~~**[NTD: Detailed signing pages to be prepared.]**~~

## SCHEDULE A

## DEFINITIONS

"~~Code~~AEOI Legislation" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"FATCA" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer~~;~~.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" ~~is defined~~has the meaning specified in Section 2.7.

"Recipient" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%~~;~~.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" ~~"~~means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

~~"**Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.~~

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

Document comparison by Workshare Compare on November-10-17 8:33:52 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Blackline Against\46490618_1.doc |
| Description | 46490618_1 |
| Document 2 ID | file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp1f34\Supplemental Indenture (Long Term Senior).doc |
| Description | Supplemental Indenture (Long Term Senior) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 139 |
| Deletions | 131 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 274 |

# ~~SENIOR~~SUBORDINATED SERIES [2017-1] SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% ~~SENIOR~~SUBORDINATED NOTES DUE ●, SERIES 2017-1**
**OF FAIR HYDRO TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION 1
1.1 Definitions 1
1.2 Interpretation 1
1.3 Application of this Supplemental Indenture 2

ARTICLE 2 SERIES 2017-1 ~~SENIOR~~**SUBORDINATED** NOTES 2
2.1 Creation of Series 2017-1 ~~Senior~~**Subordinated** Notes 2
2.2 Principal Terms 2
2.3 Delivery 3
2.4 Payment of Interest ~~3~~**4**
2.5 Payment of Principal 4
2.6 [Redemption and Repurchase 4
2.7 Indemnification by the Issuer ~~4~~**5**
2.8 Taxes 5
2.9 Conditions Precedent to Issuance of Series 2017-1 ~~Senior~~**Subordinated** Notes 6
2.10 Acceleration Events 7
[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.] 7

ARTICLE 3 REPRESENTATIONS AND WARRANTIES 7
3.1 Representations and Warranties of the Issuer 7
3.2 Survival 7

ARTICLE 4 GENERAL 7
4.1 Acceptance of Trust 7
4.2 Confirmation of Trust Indenture 7
4.3 Indenture Trustee Not Bound to Act 8
4.4 Successor and Assigns 8
4.5 Specified Creditors 8
4.6 Waiver 8
4.7 Notice 8
4.8 No Waiver: Remedies 8
4.9 Entire Agreement 9
4.10 Governing Law and Attornment 9
4.11 Expenses 9
4.12 Further Assurances 9
4.13 Limitation of Liability of Issuer Trustee 9
4.14 Execution in Counterparts 10
4.15 Delivery of Executed Copies 10

**TABLE OF CONTENTS**
(continued)

**Page**

# ●% ~~SENIOR~~SUBORDINATED NOTES DUE ●, SERIES 2017-1

**THIS ~~SENIOR~~SUBORDINATED NOTES SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of ~~Senior~~**Subordinated** Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of ~~Senior~~**Subordinated** Notes designated as the ●% ~~Senior~~**Subordinated** Notes due ●, Series 2017-1 (the "**Series 2017-1 ~~Senior~~Subordinated Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes,

amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes and not the ~~Senior~~**Subordinated** Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 ~~Senior~~**Subordinated** Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTES

### 2.1 Creation of Series 2017-1 ~~Senior~~Subordinated Notes

There is hereby created a Series of ~~Senior~~**Subordinated** Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% ~~Senior~~Subordinated Notes due ●, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 ~~Senior~~**Subordinated** Notes will:

(a) be designated as set out in Section 2.1;

(b) be ~~Senior~~**Subordinated** Notes and will not be subordinated to any other Class, Series or Tranche of **Notes other than all Senior** Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 ~~Senior~~**Subordinated** Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 ~~Senior~~**Subordinated** Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note; **[NTD: To be confirmed.]**

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

| **Payment Date** | **Principal Accumulation Amount** |
|---|---|
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Payment Date in the months of ● | $● |
| Principal Payment Date | $● |

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

### 2.3 Delivery

On the date of issuance of the Series 2017-1 ~~Senior~~**Subordinated** Notes, Series 2017-1 ~~Senior~~**Subordinated** Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

### 2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 ~~Senior~~**Subordinated** Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 ~~Senior~~**Subordinated** Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 ~~Senior~~**Subordinated** Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

### 2.5 Payment of Principal

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 ~~Senior~~**Subordinated** Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 ~~Senior~~**Subordinated** Notes to the extent of the sum represented thereby.

### 2.6 [Redemption and Repurchase

**[NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 ~~Senior~~**Subordinated** Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 ~~Senior~~**Subordinated** Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 ~~Senior~~**Subordinated** Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 ~~Senior~~**Subordinated** Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 ~~Senior~~**Subordinated** Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 ~~Senior~~**Subordinated** Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 ~~Senior~~**Subordinated** Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

## 2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

## 2.8 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment

of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**2.9 Conditions Precedent to Issuance of Series 2017-1 ~~Senior~~Subordinated Notes**

On or prior to the initial issuance of Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**]. **[NTD: To be confirmed.]**

~~(d) The Series 2017-1 Senior Notes will have been rated **[AAA(sp)]** by DBRS and **[Aaa(sp)]** by Moody's.~~

### 2.10 Acceleration Events

**[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]**

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 ~~Senior~~**Subordinated** Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

**FAIR HYDRO TRUST**, by

**ONTARIO POWER GENERATION INC.**,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA**, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

## SCHEDULE A

## DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 ~~Senior~~**Subordinated** Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 ~~Senior~~**Subordinated** Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 ~~Senior~~**Subordinated** Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 ~~Senior~~**Subordinated** Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 ~~Senior~~**Subordinated** Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 ~~Senior~~Subordinated Note**" means any one of the Series 2017-1 ~~Senior~~**Subordinated** Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

**SCHEDULE B**

**[FORM OF NOTE]**

**SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTE**

●

Document comparison by Workshare Compare on November-10-17 8:17:19 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Blackline to\Supplemental Indenture (Long Term Senior).doc |
| Description | Supplemental Indenture (Long Term Senior) |
| Document 2 ID | file://C:\Users\bsaulnie\Desktop\Blackline to\Supplemental Indenture (Long Term Subordinated).doc |
| Description | Supplemental Indenture (Long Term Subordinated) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 74 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

# SENIOR SERIES 2017-1

# SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**●**
**as Administrative Agent**

**and**

**CERTAIN CP CONDUIT PURCHASERS,**
**CERTAIN NON-CONDUIT PURCHASERS**
**CERTAIN FUNDING AGENTS**
**and CERTAIN GROUP BANKS**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION 1
1.1 Definitions 1
1.2 Interpretation 1
1.3 Application of this Supplemental Indenture 2

ARTICLE 2 PRINCIPAL TERMS 2
2.1 Creation of Series 2017-1 Senior Notes 2
2.2 Principal Terms 2

ARTICLE 3 NOTE PURCHASE FACILITY 3
3.1 Purchase of Notes by the Purchasers 3
3.2 Delivery 4
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount 4
3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination 8
3.5 Increases and Reductions of the Commitments 8
3.6 Interest; Fees and Other Amounts 9
3.7 **Accumulation and** Repayment of Principal 9
3.8 Indemnification by the Issuer 10
3.9 Funding Agents 10
3.10 Taxes 11
3.11 Increased Costs 12

ARTICLE 4 CONDITIONS PRECEDENT 13
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes 13
4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes 15

ARTICLE 5 REPRESENTATIONS AND WARRANTIES ~~15~~**16**
5.1 Representations and Warranties of the Issuer ~~15~~**16**
5.2 Representations and Warranties of the Purchasers 16
5.3 Survival 16

ARTICLE 6 COVENANTS 17
6.1 Covenants of the Issuer 17

ARTICLE 7 AGENTS 17
7.1 Administrative Agent 17
7.2 Funding Agents 20

ARTICLE 8 GENERAL 22
8.1 Successor and Assigns 22
8.2 Waiver 25

**TABLE OF CONTENTS**
(continued)

**Page**


8.3 Notice 25
8.4 No Waiver: Remedies 25
8.5 Entire Agreement 25
8.6 Governing Law and Attornment 26
8.7 Acknowledgment of Trust Indenture and No Proceedings 26
8.8 Expenses 26
8.9 Further Assurances 26
8.10 Confidentiality 27
8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions 28
8.12 Limitation of Liability of Issuer Trustee 28
8.13 Execution in Counterparts 29
8.14 Delivery of Executed Copies 29

# FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SENIOR NOTES

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions

of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any

unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

**3.2 Delivery**

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

**3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount**

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount

equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to ~~$[~~1,000,000~~]~~ or more, or (B) if less than ~~$[1,000,000],~~**1,000,000,** the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase

Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer

pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date. ~~[NTD: the definition of "Non-Deferrable Draw Amount" includes a percentage (currently [10]%) that represents the amount that cannot be deferred by the dealers. OPG should make a proposal as to this percentage.]~~

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; **[NTD: OPG would like to understand what this account is needed for]** and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

### 3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

### 3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $~~[~~10,000,000~~]~~ or a whole multiple of $~~[~~1,000,000~~]~~ in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

**3.6 Interest; Fees and Other Amounts**

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

### 3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

### 3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other

Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

**3.10 Taxes**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

### 3.11 Increased Costs

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii) relating to any period ending, and of which such Affected Party has had knowledge, more than ~~one year~~**ninety (90) days** prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture~~, the Manager Indemnity~~ and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full ~~[~~(or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made)~~]. [**NTD**: to be discussed]~~.

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

**4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes**

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

### 5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

### 5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

## ARTICLE 6
## COVENANTS

### 6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than ~~[49]~~**twenty-five percent (25)**% of the aggregate outstanding principal amount of all Issuer Funding Obligations. **[NTD: OPG has discussed with Dealers.]**

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders**, such consent not to be unreasonably withheld or delayed**.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

**[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]**

## ARTICLE 7
## AGENTS

### 7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and

statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the

Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

**7.2 Funding Agents**

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or

such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any

such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

## ARTICLE 8
## GENERAL

### 8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if

impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to

the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

## 8.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

## 8.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

- ●

### 8.4 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 8.5 Entire Agreement

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

### 8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers;

and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

**8.9 Further Assurances**

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

**8.10 Confidentiality**

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental

Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

**8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

### 8.12 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ~~●~~**Computershare** Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

### 8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

**[FAIR HYDRO TRUST]**, as Issuer

**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By:
Name:
Title:

By:
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By:
Name:
Title:

By:
Name:
Title:

●,

By:
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable **[pursuant to Section [8.02] of the Trust Indenture~~-~~]. [NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]**

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (~~e~~**d**) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an

Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

~~"**Manager Indemnity**" means an indemnity agreement from the Manager in favour of the Purchaser Groups, the Funding Agents and the Administrative Agent with respect to losses resulting from the failure of the Issuer to perform its obligations under the Program Agreements other than losses resulting from insufficient funds being transferred to the Issuer, in form and substance satisfactory to the Purchaser Groups, the Funding Agents and the Administrative Agent.~~

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section

3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) ~~[10]% of the Maximum Purchaser Group Principal Amount with respect to~~**the product of (i) $100,000,000 and (ii) the Commitment Percentage of** such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD:** ~~**The percentage in (a)(x) above is intended to represent the non-deferrable amount**~~**OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.**]

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**SCHEDULE B**

**[FORM OF NOTE]**

**SERIES 2017-1 SENIOR NOTE**

●

## SCHEDULE C

## FORM OF INCREASE NOTICE

●

## SCHEDULE D

## FORM OF DECREASE NOTICE

●

## SCHEDULE E

## PURCHASER GROUPS

- 

Document comparison by Workshare Compare on November-10-17 8:35:25 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Blackline Against\Warehouse Supplement - Nov 6, 2017 (Osler).docx |
| Description | Warehouse Supplement - Nov 6, 2017 (Osler) |
| Document 2 ID | file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp47c4\Supplemental Indenture (Short Term Senior).docx |
| Description | Supplemental Indenture (Short Term Senior) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 39 |
| Deletions | 57 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 98 |

# ~~SENIOR~~SUBORDINATED SERIES 2017-1

# SUPPLEMENTAL INDENTURE

**between**

**FAIR HYDRO TRUST**

**by**

**COMPUTERSHARE TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**BNY TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**~~●~~**
**~~as Administrative Agent~~**

**~~and~~**

**~~CERTAIN CP CONDUIT PURCHASERS,~~**
**~~CERTAIN NON-CONDUIT PURCHASERS~~**
**~~CERTAIN FUNDING AGENTS~~**
**~~and CERTAIN GROUP BANKS~~**

**ONTARIO POWER GENERATION INC.**
**as Purchaser**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION 1
1.1 Definitions 1
1.2 Interpretation 1
1.3 Application of this Supplemental Indenture 2

ARTICLE 2 PRINCIPAL TERMS 2
2.1 Creation of Series 2017-1 ~~Senior~~**Subordinated** Notes 2
2.2 Principal Terms 2

ARTICLE 3 NOTE PURCHASE FACILITY 3
3.1 Purchase of Notes by the ~~Purchasers~~**Purchaser** 3
3.2 Delivery ~~4~~**3**
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 **Subordinated** Principal Amount ~~4~~**3**
3.4 Procedure for Decreasing the Series 2017-1 **Subordinated** Principal Amount~~; Optional Termination~~ ~~8~~ **4**
3.5 Increases and Reductions of the ~~Commitments~~**2017-1 Maximum Subordinated Principal A**
3.6 Interest; ~~Fees and~~ Other Amounts ~~9~~**5**
3.7 Accumulation and Repayment of Principal ~~9~~**5**
3.8 Indemnification by the Issuer ~~10~~**6**
3.9 ~~Funding Agents~~ ~~10~~
~~3.10~~ Taxes ~~11~~**6**
~~3.11~~**3.10** Increased Costs ~~12~~**8**
**3.11 Acceleration Events** **9**

ARTICLE 4 CONDITIONS PRECEDENT ~~13~~**9**
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 ~~Senior~~**Subordinated** Notes ~~13~~**9**
4.2 Conditions Precedent to each Increase under Series 2017-1 ~~Senior~~**Subordinated** Notes ~~15~~**11**

ARTICLE 5 REPRESENTATIONS AND WARRANTIES ~~16~~**11**
5.1 Representations and Warranties of the Issuer ~~16~~**11**
5.2 Representations and Warranties of the ~~Purchasers~~ ~~16~~**Purchaser 12**
5.3 Survival ~~16~~**12**

ARTICLE 6 COVENANTS ~~17~~**12**
6.1 Covenants of the Issuer ~~17~~**12**

ARTICLE 7 ~~AGENTS~~ ~~17~~
~~7.1 Administrative Agent~~ ~~17~~
~~7.2 Funding Agents~~ ~~20~~

**TABLE OF CONTENTS**
(continued)

**Page**


~~ARTICLE 8~~ GENERAL ..... ~~22~~13
~~8.1~~7.1 Successor and Assigns ..... ~~22~~13
~~8.2~~7.2 Waiver ..... ~~25~~13
~~8.3~~7.3 Notice ..... ~~25~~13
~~8.4~~7.4 No Waiver: Remedies ..... ~~25~~14
~~8.5~~7.5 Entire Agreement ..... ~~25~~14
~~8.6~~7.6 Governing Law and Attornment ..... ~~26~~14
~~8.7~~7.7 Acknowledgment of Trust Indenture and No Proceedings ..... ~~26~~14
~~8.8~~7.8 Expenses ..... ~~26~~14
~~8.9~~7.9 Further Assurances ..... ~~26~~15
~~8.10~~7.10 Confidentiality ~~27~~15
~~8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions ..... 28~~
~~8.12~~7.11 Limitation of Liability of Issuer Trustee ~~28~~16
~~8.13~~7.12 Execution in Counterparts ~~29~~16
~~8.14~~7.13 Delivery of Executed Copies ~~29~~17

# FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTES

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ~~●~~and Ontario Power Generation Inc., in its capacity as the ~~administrative agent for the~~ purchaser (the "**Purchaser** ~~Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.~~");

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS pursuant to a Supplemental Indenture dated the date hereof between the Issuer Trustee, in its capacity as trustee of the Issuer, the Indenture Trustee, ■, in its capacity as the administrative agent for certain purchaser groups (the "Administrative Agent"), certain non-conduit purchasers from time to time party thereto, certain commercial paper conduit purchasers from time to time party thereto, and certain funding agents from time to time party thereto (the "Senior Series 2017-1 Supplemental Indenture"), the Issuer issued floating rate variable funding Series 2017-1 Senior Notes (the "Series 2017-1 Senior Notes");**

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 ~~Senior~~**Subordinated** Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 ~~Senior~~**Subordinated** Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 ~~Senior~~Subordinated Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding ~~Senior~~Subordinated Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 ~~Senior~~**Subordinated** Notes:

(a) will be designated as set out in Section 2.1;

(b) will be ~~Senior~~**Subordinated** Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum **Subordinated** Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial **Subordinated** Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be ~~Senior~~**Subordinated** Notes and will not be subordinated to any other Series, Class or Tranche of Notes **other than all Senior Notes**;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment ~~Due~~ Date that is the Series 2017-1 **Senior** Principal Payment ~~Due~~ Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 **Subordinated** Principal Payment Default Date; and

(o) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the ~~Purchasers~~Purchaser

(a) ***Initial ~~Purchases~~Purchase***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, ~~(i) each Non-Conduit~~**the** Purchaser shall ~~purchase, and each CP Conduit Purchaser may, in its sole discretion,~~ purchase a Series 2017-1 ~~Senior~~**Subordinated** Note in an amount equal to ~~all or a portion of its Commitment Percentage of~~ the Series 2017-1 Initial **Subordinated** Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**~~, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with~~

~~the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers,~~ **Payments by the Purchaser for such purchase** shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(~~d~~**c**).

(b) ***Series 2017-1 Maximum ~~Purchaser Group~~Subordinated Principal ~~Amounts~~Amount***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall ~~a~~**the** Purchaser ~~Group~~ be required to ~~make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time~~**purchase Series 2017-1 Subordinated Notes in an amount that exceeds the Series 2017-1 Maximum Subordinated Principal Amount**.

**3.2 Delivery**

(a) On the Closing Date ~~(or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture)~~, Series 2017-1 ~~Senior~~**Subordinated** Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture ~~(i)~~ in the ~~case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser~~**name of the Purchaser in an amount equal to the Series 2017-1 Maximum Subordinated Principal Amount**.

(b) The ~~Administrative Agent~~**Purchaser** shall maintain a record of the actual ~~Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual~~ Series 2017-1 **Subordinated** Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding ~~Purchaser Group Principal Amounts and outstanding~~ Series 2017-1 **Subordinated** Principal Amount from time to time. ~~Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.~~

**3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Subordinated Principal Amount**

(a) (i) On any Business Day prior to [**December 15, 2017**], ~~in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit~~**concurrent with the initial purchase of** the Series 2017-1 Senior Notes **under the Senior Series 2017-1 Supplemental Indenture, the Issuer shall request that the Purchaser purchase, and the**

Purchaser ~~hereby agrees, that it will~~**shall** purchase**,** a Series 2017-1 ~~Senior~~**Subordinated** Note for an initial purchase price equal to the ~~Commitment Percentage with respect to such Purchaser Group of the~~ Series 2017-1 Initial **Subordinated** Principal Amount ~~upon the request of the Issuer~~ (the date on which the initial purchase occurs being referred to as the "**Closing Date**")~~; provided, however, that the Issuer shall have given the Administrative Agent~~ **by giving the Purchaser** (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 ~~Senior~~**Subordinated** Notes shall **(x)** state ~~(x)~~ the Closing Date, ~~and~~ (y) **state** the ~~initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "~~Series 2017-1 Initial **Subordinated** Principal Amount~~"); and (ii) subject to Section 3.3(e),~~**, and (z) attach a copy of the irrevocable written notice delivered to the Administrative Agent pursuant to Section [3.3(a)] of the Senior Series 2017-1 Supplemental Indenture in connection with the concurrent initial purchase of the Series 2017-1 Senior Notes thereunder; and (ii)** on any Business Day ~~during the period from~~**after** the initial purchase of the Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder ~~to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group~~**, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated** Principal Amount ~~with respect to such Purchaser Group~~ may be increased by an amount ~~equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer~~**not to exceed the product of (i) the Series 2017-1 Senior Increase on such Business Day** (each date on which an increase in the Series 2017-1 **Subordinated** Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase)~~; provided, however, that the Issuer shall have given the Administrative Agent~~ **and (ii) [ninety-eight] percent [(98)]% (an "Increase") by the Issuer providing the Purchaser** (with a copy to the Indenture Trustee) irrevocable ~~(other than as specified in Section 3.3(e))~~ written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on ~~(A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice,~~ the second Business Day prior to such Increase Date. Each Increase Notice shall **(w)** state **the Increase Date,** (x) **state** the ~~Increase Date, (y) the proposed~~ amount of the increase in the Series 2017-1 **Subordinated** Principal Amount (an "**Increase Amount**"), (~~z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and~~**y) state** whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**").~~ The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.~~**, and (z) attach a copy of the irrevocable written increase notice delivered to the Administrative Agent pursuant to Section [3.3(a)] of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Increase proposed to be made thereunder.**

(b) ~~If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank~~

~~with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.~~**The Purchaser shall not** be required to increase **the Series 2017-1 Subordinated** Principal Amount on any Increase Date hereunder unless **after giving effect to such Increase Amount, the Series 2017-1 Maximum Subordinated Principal Amount is not exceeded.**

~~(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:~~

~~(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $1,000,000 or more, or (B) if less than $1,000,000, the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and~~

~~(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;~~

~~(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the~~

Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date.

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser

~~Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.~~

~~(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).~~

**(c)** ~~(h)~~ The Issuer shall apply amounts paid to it pursuant to ~~Sections~~**Section** 3.3(~~d) and 3.3(f~~**a**) in the following order of priority:

(i) **[As to an amount equal to ●% of the amounts paid to pursuant to ~~Sections~~Section 3.3(~~d) and 3.3(f~~a), by deposit to the Program Cash Reserve Account; and] [NTD: ~~OPG would like to understand what~~Discuss how this account is ~~needed for~~] ~~and~~to be funded.]**

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

**3.4 Procedure for Decreasing the Series 2017-1 Subordinated Principal Amount~~; Optional Termination~~**

(a) ~~In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group~~**On any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount** may be decreased ~~on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount~~**by an amount not to exceed the product of (i) the Series 2017-1 Senior Decrease on such Business Day, and (ii) [ninety-eight] percent [(98)]%** (a "**Decrease**")~~, upon~~

~~the request of the Issuer. .~~ . Each Payment Date on which a Decrease in the Series 2017-1 **Subordinated** Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; ~~provided, however, that~~**and** the Issuer shall ~~have given~~**provide to** the ~~Administrative Agent~~**Purchaser** (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall ~~state~~ (x) **state** the Decrease Date, ~~and~~ (y) **state** the ~~proposed~~ amount of the decrease in the Series 2017-1 **Subordinated** Principal Amount (a "**Decrease Amount**")**, and (z) attach a copy of the irrevocable written decrease notice delivered to the Administrative Agent pursuant to Section [3.4] of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Decrease proposed to be made thereunder**.

~~(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.~~

~~(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.~~

### 3.5 Increases and Reductions of the ~~Commitments~~**2017-1 Maximum Subordinated Principal Amount**

(a) ~~The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.~~**If one or more Maximum Purchaser Group Principal Amounts are increased pursuant to Section [3.5(a)] of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Subordinated Maximum Principal Amount shall be automatically increased by an amount equal to [ninety-eight] percent [(98)]% of such aggregate increase to the Maximum Purchaser Group Principal Amounts pursuant to Section [3.5(a)] of the Senior Series 2017-1 Supplemental Indenture. [NTD: Consider whether in senior warehouse supplemental if section 5.01 CPs must be met and new note issued. We are missing mechanic if so.]**

(b) ~~On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $10,000,000 or a whole multiple of $1,000,000 in excess thereof; provided that no such termination or reduction shall be~~

~~permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.~~**If the Series 2017-1 Maximum Senior Principal Amount is reduced pursuant to Section [3.5(b)] of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Maximum Subordinated Principal Amount shall be automatically decreased by an amount equal to [ninety-eight] percent [(98)]% of such aggregate decrease to the Series 2017-1 Maximum Senior Principal Amount pursuant to Section [3.5(b)] of the Senior Series 2017-1 Supplemental Indenture. [NTD: Consider if new note to be issued. We are missing mechanic if so.]**

~~(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.~~

### 3.6 Interest; ~~Fees and~~ Other Amounts

(a) Interest shall be payable on the Series 2017-1 ~~Senior~~**Subordinated** Notes on each Payment Date.

(b) The~~ Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date. (c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit~~ Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the ~~Group~~ Monthly Interest and the ~~Group~~ Monthly ~~Fees and~~ Other Amounts with respect ~~to its Related Purchaser Group with respect~~ to the Payment Date.

**(c)** ~~(d)~~ The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (~~Senior~~**Subordinated**) for the purposes of Section **[7.04(e)(~~iii~~ix)]** of the Trust Indenture and shall be payable pursuant to Sections **[7.05(~~a~~b), 7.08(a)(~~i~~ii) or 8.13(c)]** of the Trust Indenture, as applicable. On each Payment Date, the Monthly ~~Fees and~~ Other Amounts shall be payable in respect of the Series 2017-1 **Subordinated** Notes pursuant to Sections **[7.04(e)(~~iii~~ix) or 8.13(~~e~~h)]** of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to ~~each CP Conduit~~**the** Purchaser ~~Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and~~**the Monthly** Other Amounts with respect to the Payment Date~~; provided that if the amounts available to pay~~

~~such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group~~.

### 3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 **Subordinated** Notes:

(i) for each Payment Date before the Principal Accumulation Date **or an Acceleration Event**, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; ~~and~~

(ii) for each Payment Date on or after the Principal Accumulation Date **prior to the occurrence of an Acceleration Event**, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date**; and**

**(iii) for each Payment Date following the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the Series 2017-1 Subordinated Principal Amount**.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 **Subordinated** Notes. On each Principal Payment Date in respect of the Series 2017-1 **Subordinated** Notes, the Paying Agent shall pay to ~~each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of~~**the Purchaser** the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 ~~Senior~~**Subordinated** Notes pursuant to Sections **[7.04(e)(~~iv~~)(~~A~~x), 7.06(~~a~~b) or 8.13(~~d~~i)]** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 **Subordinated** Notes.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee~~, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit~~ **and the** Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer ~~indemnified person~~Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer ~~indemnified person~~**Indemnified Person** by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely

from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

~~**3.9 Funding Agents**~~

~~(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.~~

~~(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.~~

**3.9 ~~3.10~~ Taxes**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable

hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the ~~Group~~ Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section ~~3.10~~**3.9**(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

**3.10 ~~3.11~~ Increased Costs**

(a) (i) If any Regulatory Change (x) subjects ~~any Affected Party~~**the Purchaser** to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or ~~an Affected Person~~**the Purchaser**'s obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to ~~any Affected Person~~**the Purchaser** of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of ~~an Affected Person~~**the Purchaser** or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of ~~an Affected Person~~**the Purchaser**, or credit extended by ~~an Affected Person~~**the Purchaser** pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to ~~an Affected Person~~**the Purchaser** of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on ~~an Affected Person~~**the Purchaser**'s capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by ~~an Affected Person~~**the Purchaser** under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by ~~such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser~~

~~or Group Bank)~~**the Purchaser** of a written request therefore to the Issuer, ~~such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank)~~**the Purchaser** shall be entitled to be paid, such amounts charged to ~~such Affected Party~~**the Purchaser** or such amounts to otherwise compensate ~~such Affected~~**the Purchaser** for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section ~~3.11~~**3.10**(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that ~~any Affected Party~~**the Purchaser** may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on ~~such Affected Party~~**the Purchaser**'s interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section ~~3.11~~**3.10**(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the ~~related Funding Agent, for the benefit of Affected Party~~**Purchaser**, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the ~~Affected Party~~**Purchaser** shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) ~~an Affected Party~~**the Purchaser** shall not be compensated for any such amount pursuant to this subsection ~~3.11~~**3.10**(a)(ii) relating to any period ending, and of which ~~such Affected Party~~**the Purchaser** has had knowledge, more than ninety (90) days prior to the date that ~~such Affected Party~~**the Purchaser** provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection ~~3.11~~**3.10**(a)(ii), (III) if, after the payment by the ~~Trust~~**Issuer** of any charges or compensation pursuant to this subsection ~~3.11~~**3.10**(a)(ii), either (A) the Issuer requests in writing that the ~~applicable Affected Party~~**Purchaser** re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the ~~applicable Affected Party~~**the Purchaser** determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection ~~3.11~~**3.10**(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) ~~such Affected Party~~**the Purchaser** shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection ~~3.11~~**3.10**(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by ~~such Affected Party~~**the Purchaser**.

(b) ~~Each Affected Party~~**The Purchaser** claiming increased amounts described in subsection ~~3.11~~**3.10**(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by ~~such Affected Party~~**the Purchaser** for any such increased amounts referred to in subsection ~~3.11~~**3.10**(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of ~~any Affected Party~~**the Purchaser** to demand compensation for any amount pursuant to subsection ~~3.11~~**3.10**(a) hereof with respect to

any period shall not constitute a waiver of ~~such Affected Party~~**the Purchaser**'s right to demand compensation with respect to such period.

**3.11 Acceleration Events**

**[NTD: To be conformed with Senior Supplemental Indenture.]**

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 ~~Senior~~Subordinated Notes

On or prior to the initial purchase of Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The ~~Administrative Agent and each of the Funding Agents~~**Purchaser** shall have received:

(i) executed copies of ~~the Fee Letter,~~ this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates ~~the Administrative Agent and~~ the Purchaser ~~Groups~~ shall be entitled to conclusively rely until such time as the ~~Administrative Agent and the Funding Agents receive~~**Purchaser receives** a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the ~~Administrative Agent and the Funding Agents~~**Purchaser**;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the ~~Administrative Agent and the Funding Agents~~**Purchaser**;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement **and the Change of Law Process Agreement** in form and substance satisfactory to the ~~Administration Agent and the Funding Agents~~**Purchaser**;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the ~~Administrative Agent or any Funding Agent~~**Purchaser** may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been duly issued in accordance with the Trust Indenture and ~~each Funding Agent and Non-Conduit~~**the** Purchaser shall have received its Series 2017-1 ~~Senior~~**Subordinated** Note registered in its name or a nominee in a face amount equal to ~~its~~**the Series 2017-1** Maximum ~~Purchaser Group~~ Principal **Subordinated** Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

~~(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full (or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made).~~

~~(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.~~

**4.2 Conditions Precedent to each Increase under Series 2017-1 ~~Senior~~Subordinated Notes**

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the ~~Administrative Agent~~**Purchaser** shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase; **and**

~~(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;~~

**(c)** ~~(d)~~ if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed~~; and (e) after giving effect to the Increase, the Rating Agency Condition will be satisfied~~.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

**5.1 Representations and Warranties of the Issuer**

The Issuer hereby represents and warrants to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ as of the Closing Date, and shall be deemed to represent and warrant to ~~the Administrative Agent and~~ the Purchaser ~~Groups~~ on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

**5.2 Representations and Warranties of the ~~Purchasers~~Each Purchaser ~~Group member~~**

**The Purchaser** represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 ~~Senior~~**Subordinated** Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

**5.3 Survival**

The representations and warranties set out in this Article 5 shall survive the execution hereof.

## ARTICLE 6
## COVENANTS

**6.1 Covenants of the Issuer**

(a) The Issuer shall promptly provide to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement**; provided such documents shall be deemed to be delivered hereunder so long as the Purchaser is the Manager**.

(b) The Issuer shall provide to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the ~~Administrative Agent, a Funding Agent or a Non-Conduit~~ Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect**; provided that the Purchaser shall be deemed to have knowledge of such actions, suits or proceedings so long as it is the Manager**.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not ~~less~~**more** than ~~twenty-five~~**forty-nine** percent (~~25~~**49**)% of the aggregate outstanding principal amount of all Issuer Funding Obligations~~. [NTD: OPG has discussed with Dealers.]~~ **(excluding Derivative Funding Obligations).**

~~(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders, such consent not to be unreasonably withheld or delayed.~~

~~(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.~~

~~(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.~~

~~**[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]**~~

## ARTICLE 7
## ~~AGENTS~~

### ~~7.1 Administrative Agent~~

~~(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.~~

~~(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.~~

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own

decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

**7.2 Funding Agents**

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be

~~indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.~~

~~(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.~~

~~(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.~~

~~(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall~~

~~survive the payment of all amounts payable hereunder.~~ **~~ARTICLE 8~~**
**GENERAL**

**7.1** **~~8.1~~ Successor and Assigns**

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns~~,~~ except that (i) the Issuer may not assign or transfer any of its rights **or obligations** under this Supplemental Indenture without the prior written consent of ~~all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may~~**the Purchaser; and (ii) the Purchaser may, without the prior written consent of the Issuer,** assign or transfer any of its rights or obligations under this Supplemental Indenture ~~except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.~~ **in the ordinary course of its business and in accordance with applicable law to another Person (each, a "Transferee") pursuant to a transfer supplement, substantially in the form of Exhibit ■ (the "Transfer Supplement").**

~~(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.~~

~~(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.~~

~~(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.~~

~~(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.~~

~~(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.~~

**(b)** ~~(g)~~ The Issuer authorizes ~~each Group Bank and Non-Conduit~~**the** Purchaser to disclose to any ~~Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**")~~**Transferee** and any prospective Transferee any and all financial information in ~~such Group Bank's or Non-Conduit~~**the** Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to ~~such Group Bank~~**the Purchaser** by the Issuer or the Manager ~~in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset~~.

**(c)** ~~(h)~~ Notwithstanding any other provision of this Supplemental Indenture to the contrary, ~~any Non-Conduit~~**the** Purchaser~~, any Group Bank or any Program Support Provider~~ may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 ~~Senior~~**Subordinated** Note and this Supplemental Indenture to secure obligations of ~~such Non-Conduit~~**the** Purchaser~~, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada~~ **to any Person**, without notice to or consent of the ~~Administrative Agent, the~~ Issuer ~~or the Administrator~~; provided that no such pledge or grant of a security interest shall release ~~a Non-Conduit~~**the** Purchaser ~~or an Group Bank~~ from any of its obligations hereunder or substitute any such pledgee or grantee for ~~such Non-Conduit~~**the** Purchaser ~~or such Group Bank~~ as a party hereto.

### 7.2 ~~8.2~~ Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental

Indenture will be effective (in whole or in part) unless in writing and signed by the ~~Requisite Series 2017-1 Noteholders~~**Purchaser**. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the ~~Requisite Series 2017-1 Noteholders~~**Purchaser**.

**7.3 ~~8.3~~ Notice**

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the ~~Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents~~**Purchaser**, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows~~ in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents~~; or to such other address as may be hereafter notified by the respective parties hereto:

~~Administrative Agent:~~**Purchaser:**

●

**Ontario Power Generation Inc.**
**700 University Avenue**
**Toronto, Ontario M5G 1X6**

**Attention: [■]**
**Fax: (416) [■]**
**Email: [■]**

**7.4 ~~8.4~~ No Waiver: Remedies**

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

**7.5 ~~8.5~~ Entire Agreement**

This Supplemental Indenture, ~~the Fee Letter,~~ the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, ~~the Fee Letter,~~ the Trust Indenture and the other Program Agreements.

### 7.6 ~~8.6~~ Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 7.7 ~~8.7~~ Acknowledgment of Trust Indenture and No Proceedings

The ~~Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby~~**Purchaser** acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

### 7.8 ~~8.8~~ Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee~~, the Administrative Agent~~ and the Purchaser~~ Groups~~ all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for ~~the Administrative Agent and~~ the Purchaser~~ Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements~~**, with respect thereto**; (b) to the Indenture Trustee~~,~~ **and** the ~~Administrative Agent and each~~ Purchaser~~ Group~~**,** all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto~~, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers~~; and (c) to the Indenture Trustee~~, the Administrative Agent~~ and ~~each~~**the** Purchaser~~ Group~~, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the ~~Administrative Agent and each~~ Purchaser~~ Group~~), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 7.9 ~~8.9~~ Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 7.10 ~~8.10~~ Confidentiality

(a) ~~Each~~**The** Purchaser~~ Group and the Administrative Agent~~ covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other

Program Agreements shall be held in confidence except that the Purchaser ~~Groups or Administrative Agent~~ may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, ~~a~~**the** Purchaser ~~Group or the Administrative Agent, as applicable,~~ shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over ~~any~~**the** Purchaser ~~Group or the Administrative Agent~~; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information ~~(provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser)~~; (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~ on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser ~~Group or the Administrative Agent, as applicable,~~ bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~ without violating any of the Purchaser ~~Group's or the Administrative Agent~~'s obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture ~~(including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable~~**, except as the** Purchaser ~~Group~~ may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the ~~affected Administrative Agent or~~ Purchaser ~~Group~~ of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 ~~Senior~~**Subordinated** Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

~~**8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**~~

~~Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:~~

~~(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and~~

~~(b) the effects of any Bail-in Action on any such liability, including, if applicable~~

~~(i) a reduction in full or in part or cancellation of any such liability;~~

~~(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or~~

~~(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.~~

**7.11** ~~**8.12**~~ **Limitation of Liability of Issuer Trustee**

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.12~~**7.11**, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this

Supplemental Indenture. Nothing contained in this Section ~~8.12~~**7.11** shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 ~~Senior~~**Subordinated** Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

**7.12 ~~8.13~~ Execution in Counterparts**

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

**7.13 ~~8.14~~ Delivery of Executed Copies**

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this ~~Trust~~**Supplemental** Indenture as of the date first above written.

~~[~~**FAIR HYDRO TRUST**~~]~~, as Issuer**, by**

**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

~~●~~**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

~~●,~~ **ONTARIO POWER GENERATION INC., as Purchaser**

**By:** _____
**Name:**
**Title:**

By: _____
Name:
Title:

~~**[NTD: Detailed signing pages to be prepared.]**~~

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means **the outstanding Dollar Principal Amount of the Series 2017-1 Senior Notes** have been declared or automatically **become due and payable pursuant to Section [3.11] of the Senior Series 2017-1 Supplemental Indenture and** the outstanding Dollar Principal Amount of ~~all Funding Obligations of~~ the Series 2017-1 ~~Senior~~**Subordinated** Notes have been declared or automatically become due and payable ~~[~~pursuant to Section ~~**[8.02] of the Trust Indenture]. [NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]**~~**3.11.

"**Administrative Agent**" shall have the meaning specified in the ~~preamble~~**recitals** to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

~~"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.~~

"**Applicable Margin**" ~~is defined in the Fee Letter~~**means ■**.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

~~"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.~~

~~"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.~~

~~"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).~~

~~"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**~~

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section ~~3.10~~**3.9**(a).

~~"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.~~

~~"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.~~

~~"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.~~

~~"**Commitment Fee**" is defined in Section 3.6(b).~~

~~"**Commitment Fee Rate**" is defined in the Fee Letter.~~

~~"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.~~

~~"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of~~

~~the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).~~

~~"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.~~

~~"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture~~

~~"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.~~

~~"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.~~

~~"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.~~

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

~~"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).~~

~~"**Delayed Amount**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Date**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Notice**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.~~

~~"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.~~

~~"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.~~

~~"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.~~

~~"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.~~

~~"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.~~

"**Excluded Taxes**" shall have the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

~~"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.~~

~~"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.~~

~~"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the~~

~~Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).~~

"~~**Group Bank Funded Amount**~~" ~~means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.~~

"~~**Group Bank Participants**~~" ~~is defined in Section 8.1(d).~~

"~~**Group Monthly Fees and Other Amounts**~~" ~~shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.~~

"~~**Group Monthly Interest**~~" ~~means, with respect to each Interest Period and:~~

~~(a)~~ ~~any CP Conduit Purchaser Group, the sum of:~~

~~(i)~~ ~~for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus~~

~~(ii)~~ ~~for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus~~

~~(iii)~~ ~~for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.~~

~~(b)~~ ~~any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.~~

~~For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group~~

~~Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.~~

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

**"Indenture Trustee" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer** ~~**indemnified person**~~**" shall have the meaning specified in the recitals to this Supplemental Indenture.**

**"Issuer Indemnified Person**" is defined in Section 3.8.

"**Issuer** ~~**indemnified person**" is defined in Section 3.8~~**Trustee" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"**Maximum Purchaser Group Principal Amount**" ~~means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.~~**shall have the meaning specified in the Senior Series 2017-1 Supplemental Indenture.**

"**Monthly Interest**" shall mean, for any Payment Date, ~~the aggregate for all Purchaser Groups of~~ the sum of (~~a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b~~**A) the sum for each day during such Interest Period of the product of (i) the Series 2017-1 Subordinated Principal Amount on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365, and (B**) the Monthly Interest Shortfall ~~for such Payment Date for each Purchaser Group~~**; provided that, for** the purposes of determining the Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the **Purchaser** may estimate the interest for the remaining days in the Interest Period **and provided further, if** the actual interest for such days is less than the estimated interest, the Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual

interest and if the actual interest for such days is higher than the estimated interest, the Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

~~"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.~~

"**Monthly Interest Shortfall**" means, for any Payment Date~~ and a Purchaser Group~~, if the amount **in clause (A)** of the ~~Group~~**definition of** Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(~~d~~**c**), an amount equal to the ~~Group~~**amount in clause (A) of the definition of** Monthly Interest owing to ~~such~~**the** Purchaser~~ Group~~ which ~~were~~**was** unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly ~~Fees and~~Other Amounts" shall mean, for any Payment Date the sum of (a) any amounts payable to the Purchaser** hereunder including, without limitation, pursuant to Sections **3.8, 3.9, 3.10 and 7.8; plus (c) the Monthly** Other Amounts Shortfall for such **Payment Date.**

**"Monthly Other Amounts Shortfall**" means, for any Payment Date~~ and a Purchaser Group~~, if the amount of the Monthly~~ Fees and~~ Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(~~d~~**c**), an amount equal to the Monthly~~ Fees and~~ Other Amounts owing to ~~such~~**the** Purchaser~~ Group~~ which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

~~"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.~~

~~"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.~~

~~"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).~~

~~"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) the product of (i) $100,000,000 and (ii) the Commitment Percentage of such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such~~

~~Increase Date. [**NTD: OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.**]~~

~~"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).~~

~~"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).~~

~~"**Optional Termination Date**" is defined in Section 3.4.~~

~~"**Optional Termination Notice**" is defined in Section 3.4.~~

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017~~-1~~**-1 Subordinated** Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, **[2021]**.

"**Principal Payment Amount**" means, in respect of the Series 2017-1 **Subordinated** Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment ~~Due~~ Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 **Subordinated** Principal Amount.

"~~**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.~~**Purchaser" shall have the meaning specified in the recitals to this Supplemental Indenture.**

~~"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.~~

~~"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.~~

~~"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.~~

~~"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.~~

~~"**Purchaser Group Supplement**" is defined in Section 8.1(e).~~

~~"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.~~

"**Recipient**" has the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any

change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"~~**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.~~ **Senior Series 2017-1 Supplemental Indenture" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"~~**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.~~**Series 2017-1 Initial Senior Principal Amount" means the "Series 2017-1 Initial Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.**

"~~**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).~~**Series 2017-1 Initial Subordinated Principal Amount" means an amount equal to [ninety-eight percent (98%)] of the Series 2017-1 Initial Senior Principal Amount**

"~~**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.**]~~

~~"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).~~

~~"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.~~

~~"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.~~

~~"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date~~**Series 2017-1 Maximum Senior Principal Amount" means the "Series 2017-1 Maximum Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.**

**"Series 2017-1 Maximum Subordinated Principal Amount" means an amount equal to [ninety-eight percent (98%)] of the Series 2017-1 Maximum Senior Principal Amount.**

**"Series 2017-1 Senior Decrease" means, with respect to a Business Day, the sum of all amounts of Decreases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.**

**"Series 2017-1 Senior Increase" means, with respect to a Business Day, the sum of all amounts of Increases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.**

**"Series 2017-1 Senior Notes" shall have the meaning specified in the recitals to this Supplemental Indenture**.

"**Series 2017-1 Senior Principal Payment ~~Due~~ Date**" means ●■. **[NTD: the date upon which the Series 2017-1 Senior Notes become due and payable~~ – a date after May 1, 2021?~~.]**

"**Series 2017-1 ~~Principal Payment Default Date~~**" means ●. ~~[NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]~~"**~~Series 2017-1 Senior~~Subordinated Note**" means any one of the Floating Rate Variable Funding ~~Senior~~**Subordinated** Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"~~**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.~~**Series 2017-1 Subordinated Principal Amount" means (a) when used with respect to the Closing Date, the Series 2017-1 Initial Subordinated Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Series 2017-1 Subordinated Principal Amount on the immediately preceding Business Day; plus (ii) the Increase Amount on such date; minus (iii) the Decrease Amount on such date; minus (iv)** the amount of principal payments made to **the Purchaser pursuant to Section 3.7 on such date.**

**"Series 2017-1 Subordinated Principal Payment Default Date" means ■. [NTD: likely later than the Series 2017-1 Senior Principal Payment Default Date.]**

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with ~~a CP Conduit~~**the** Purchaser which relates to, or is otherwise available to ~~such CP Conduit~~**the** Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any **Acceleration** Event ~~of Default~~ or any event which with the giving of notice or the passage of time, or both, could become an **Acceleration** Event ~~of Default~~.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section ~~8.1~~**7.1**(~~c~~**a**).

"**Transferee**" is defined in Section ~~8.1~~**7.1**(~~g~~**b**).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

~~"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.~~

**SCHEDULE B**

**[FORM OF NOTE]**

**SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTE**

●

## SCHEDULE C

## FORM OF INCREASE NOTICE

●

## SCHEDULE D

## FORM OF DECREASE NOTICE

## ~~SCHEDULE E~~

## ~~PURCHASER GROUPS~~

Document comparison by Workshare Compare on November-10-17 8:18:02 PM

| Input: | |
|---|---|
| Document 1 ID | file://C:\Users\bsaulnie\Desktop\Blackline to\Supplemental Indenture (Short Term Senior).DOCX |
| Description | Supplemental Indenture (Short Term Senior) |
| Document 2 ID | file://C:\Users\bsaulnie\Desktop\Blackline to\Supplemental Indenture (Short Term Subordinated).docx |
| Description | Supplemental Indenture (Short Term Subordinated) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 369 |
| Deletions | 558 |
| Moved from | 13 |
| Moved to | 13 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 953 |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Mike Manning; James Devine; Carlos Yep |
| **Cc:** | John Psinas |
| **Subject:** | FW: Fair Hydro Plan Protocol Agreement |
| **Date:** | Tuesday, November 07, 2017 2:30:36 PM |
| **Attachments:** | Fair Hydro- Subordinated Notes_LT funding Protocol-V2.doc |

---

We can discuss.

Thanks

Ken k

---

**From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
**Sent:** Tuesday, November 07, 2017 1:23 PM
**To:** Ken Kandeepan
**Cc:** PRESTON Stuart -TREASURY ; MCAULEY Tyler -LAWDIV
**Subject:** Fair Hydro Plan Protocol Agreement

Ken,

As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.

Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.

Thanks

Sheen

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

ONTARIO POWER GENERATION

**PROTOCOL DOCUMENT- SUBORDINATED NOTES**

| | |
|---|---|
| **Advances:** | OPG agrees to make Advances to the Trust from time to time on any Business Day prior to [January 1, 20X7]. OPG shall make these Advances on the same business day, concurrently with the funding by the ABCP conduit or term-out debt in the Capital Markets. |
| **Procedure for Advance:** | The Trust via the FSM shall provide OPG with [written] notice/ [their transfer notice to the IESO] requesting an Advance at least [x] Business Days prior to the date of the Advance; Each such notice (a **"Borrowing Notice**") shall be substantially in the form of Schedule [X] and shall specify: (a) the date of the Advance (the **"Advance Date**"); (b) the principal amount of the Advance<br><br>The interest rate that shall apply to such Advance shall be set in accordance with the procedure set forth in Pricing Grid. |
| **Base Rate:** | The interest rate applicable to an Advance shall be the aggregate of the applicable Base Rate and the Applicable Spread.<br><br>For short-term funding the Base Rate means an annual rate of interest equal to the ABCP Trusts' cost of funds for the applicable contract period plus the Applicable Spread.<br><br>For term-out funding the **"Base Rate"** means an annual rate of interest comprised of the applicable yield for the Benchmark Government of Canada bonds. In the event that there are no Benchmark Government of Canada bonds listed at the time of the Advance with the same term, the rate shall be established by interpolating the terms of the two Benchmark Government of Canada bonds that are closest to the term of the Advance, one being for a longer term and the other being for a shorter term.<br><br>The Base Rate will be the same as that rate used to price the Senior debt in the market by the dealers, **provided** the term of the subordinate debt is the same as the senior debt. [Need to confirm whether this will always be the case over term of the program – Lubna question] |
| **Applicable Spread:** | Means the additional interest in basis points over the Base Rate that will apply to an Advance, as determined by OPG based on a survey of market spreads from a syndicate of banks.<br><br>OPG's banking syndicate (or a sub-set of the syndicate – i.e. ABCP conduit banks) will annually provide short-term lending spreads on committed bank credit facilities based on a ratings grid. OPG will assume the existing ratings for the subordinated and junior subordinated debt from the rating agencies as a proxy for the short-term rating |

<table>
<tr><td></td><td>and use the corresponding applicable spread.<br><br>For term debt a syndicate of [5] banks will provide [weekly] spreads for various terms of capital markets debt based on the current rating of the subordinated and junior subordinated debt from the rating agencies. A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample.</td></tr>
<tr><td>Credit Rating</td><td>The relevant Applicable Spread for any day shall be based on the debt ratings from Moody’s and/or DBRS [on that day], and shall be selected from the relevant row in the Pricing Grid except that if the Moody’s and DBRS debt ratings appear on different rows, (a) where those rows are adjacent, the Applicable Margin shall be that set out in the row containing the higher of the two ratings; and (b) where those rows are not adjacent, the Applicable Margin will be calculated as the average of the Applicable Margins indicated by each of the Moody’s and DBRS Ratings<br><br>Any adjustment to the Applicable Spread shall be calculated with effect from and as of the publication date of any change to the subordinated and junior subordinated debt ratings from Moody’s and/or DBRS.</td></tr>
<tr><td>Pricing Grid:</td><td>
<table>
<tr><td>Subordinate and Junior Subordinated Debt Rating (Moody's and DBRS, respectively)</td><td>Short-Term Funding concurrent with Bank Conduit Warehouse facility<br><br>ABCP Conduit Rate plus Applicable Spread</td><td>Long-Term Funding concurrent with Capital Markets funding<br><br>Senior Debt Base rate plus Applicable Spread</td></tr>
<tr><td>AAA-and AAA(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA+ and AA(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA and AA</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA- and AA(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A+ and A(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A and A</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A- and A(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>BBB+ and BBB(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>BBB and BBB</td><td>TBD</td><td>TBD</td></tr>
</table>
<br>Assumes long-term funding for Senior and Subordinate/ Junior debt is always the</td></tr>
</table>

ONTARIO POWER GENERATION

**PROTOCOL DOCUMENT- SUBORDINATED NOTES**

| | |
|---|---|
| | same tenor |
| **Repayment:** | From time to time prior to the Maturity Date, the Trust may repay, in whole or in part, any, ABCP conduit Loans outstanding. Any amount so repaid may be re-borrowed. The Trust shall give 1 Business Day's notice to OPG of its desire to make any repayment.<br><br>Term-out debt will be repaid at maturity subject to the terms of the notes. |
| **Mandatory Repayment:** | (1) Upon a term-out of debt from the ABCP conduits to the Capital Markets<br><br>(a) A pro rata reduction of the short-term subordinated and junior subordinate debt occurs, and<br><br>(b) An equivalent dollar amount of new borrowings are provided under a Term Debt loan arrangement. |
| **Key Terms** | [NTD: To be Discussed] |
| | |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Mike Manning; Carlos Yep; James Devine |
| **Subject:** | FW: Fair Hydro Plan Protocol Agreement |
| **Date:** | Tuesday, November 14, 2017 7:15:44 PM |
| **Attachments:** | Fair Hydro- Subordinated Notes_LT funding Protocol-V2.doc |

Hi Mike et al

Could we pls meet on this for 15 minutes tomorrow and provide comments to OPG.

Thanks

Ken K

**From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
**Sent:** Tuesday, November 07, 2017 1:23 PM
**To:** Ken Kandeepan
**Cc:** PRESTON Stuart -TREASURY ; MCAULEY Tyler -LAWDIV
**Subject:** Fair Hydro Plan Protocol Agreement

Ken,

As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.

Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.

Thanks

Sheen

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

ONTARIO POWER GENERATION

**PROTOCOL DOCUMENT- SUBORDINATED NOTES**

| | |
|---|---|
| **Advances:** | OPG agrees to make Advances to the Trust from time to time on any Business Day prior to [January 1, 20X7]. OPG shall make these Advances on the same business day, concurrently with the funding by the ABCP conduit or term-out debt in the Capital Markets. |
| **Procedure for Advance:** | The Trust via the FSM shall provide OPG with [written] notice/ [their transfer notice to the IESO] requesting an Advance at least [x] Business Days prior to the date of the Advance; Each such notice (a **"Borrowing Notice**") shall be substantially in the form of Schedule [X] and shall specify: (a) the date of the Advance (the **"Advance Date**"); (b) the principal amount of the Advance<br><br>The interest rate that shall apply to such Advance shall be set in accordance with the procedure set forth in Pricing Grid. |
| **Base Rate:** | The interest rate applicable to an Advance shall be the aggregate of the applicable Base Rate and the Applicable Spread.<br><br>For short-term funding the Base Rate means an annual rate of interest equal to the ABCP Trusts' cost of funds for the applicable contract period plus the Applicable Spread.<br><br>For term-out funding the **"Base Rate"** means an annual rate of interest comprised of the applicable yield for the Benchmark Government of Canada bonds. In the event that there are no Benchmark Government of Canada bonds listed at the time of the Advance with the same term, the rate shall be established by interpolating the terms of the two Benchmark Government of Canada bonds that are closest to the term of the Advance, one being for a longer term and the other being for a shorter term.<br><br>The Base Rate will be the same as that rate used to price the Senior debt in the market by the dealers, **provided** the term of the subordinate debt is the same as the senior debt. [Need to confirm whether this will always be the case over term of the program – Lubna question] |
| **Applicable Spread:** | Means the additional interest in basis points over the Base Rate that will apply to an Advance, as determined by OPG based on a survey of market spreads from a syndicate of banks.<br><br>OPG's banking syndicate (or a sub-set of the syndicate – i.e. ABCP conduit banks) will annually provide short-term lending spreads on committed bank credit facilities based on a ratings grid. OPG will assume the existing ratings for the subordinated and junior subordinated debt from the rating agencies as a proxy for the short-term rating |

<table>
<tr><td></td><td>and use the corresponding applicable spread.<br><br>For term debt a syndicate of [5] banks will provide [weekly] spreads for various terms of capital markets debt based on the current rating of the subordinated and junior subordinated debt from the rating agencies. A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample.</td></tr>
<tr><td>Credit Rating</td><td>The relevant Applicable Spread for any day shall be based on the debt ratings from Moody’s and/or DBRS [on that day], and shall be selected from the relevant row in the Pricing Grid except that if the Moody’s and DBRS debt ratings appear on different rows, (a) where those rows are adjacent, the Applicable Margin shall be that set out in the row containing the higher of the two ratings; and (b) where those rows are not adjacent, the Applicable Margin will be calculated as the average of the Applicable Margins indicated by each of the Moody’s and DBRS Ratings<br><br>Any adjustment to the Applicable Spread shall be calculated with effect from and as of the publication date of any change to the subordinated and junior subordinated debt ratings from Moody’s and/or DBRS.</td></tr>
<tr><td>Pricing Grid:</td><td>
<table>
<tr><td>Subordinate and Junior Subordinated Debt Rating (Moody's and DBRS, respectively)</td><td>Short-Term Funding concurrent with Bank Conduit Warehouse facility<br><br>ABCP Conduit Rate plus Applicable Spread</td><td>Long-Term Funding concurrent with Capital Markets funding<br><br>Senior Debt Base rate plus Applicable Spread</td></tr>
<tr><td>AAA-and AAA(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA+ and AA(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA and AA</td><td>TBD</td><td>TBD</td></tr>
<tr><td>AA- and AA(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A+ and A(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A and A</td><td>TBD</td><td>TBD</td></tr>
<tr><td>A- and A(low)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>BBB+ and BBB(high)</td><td>TBD</td><td>TBD</td></tr>
<tr><td>BBB and BBB</td><td>TBD</td><td>TBD</td></tr>
</table>
<br>Assumes long-term funding for Senior and Subordinate/ Junior debt is always the</td></tr>
</table>

ONTARIO POWER GENERATION

**PROTOCOL DOCUMENT- SUBORDINATED NOTES**

| | |
|---|---|
| | same tenor |
| **Repayment:** | From time to time prior to the Maturity Date, the Trust may repay, in whole or in part, any, ABCP conduit Loans outstanding. Any amount so repaid may be re-borrowed. The Trust shall give 1 Business Day's notice to OPG of its desire to make any repayment.<br><br>Term-out debt will be repaid at maturity subject to the terms of the notes. |
| **Mandatory Repayment:** | (1) Upon a term-out of debt from the ABCP conduits to the Capital Markets<br><br>(a) A pro rata reduction of the short-term subordinated and junior subordinate debt occurs, and<br><br>(b) An equivalent dollar amount of new borrowings are provided under a Term Debt loan arrangement. |
| **Key Terms** | [NTD: To be Discussed] |
| | |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Gadi Mayman; Mike Manning |
| **Subject:** | FW: Final Package for OAG |
| **Date:** | Wednesday, October 04, 2017 2:02:02 PM |
| **Attachments:** | AG FHP Report - Consolidated Comments - FINAL.pdf<br>Government Response to AG FHP Report - FINAL.pdf<br>Joint DM Memo to OAG - Oct 4 2017.pdf<br>Supporting Evidence per Consolidated Comments.zip |
| **Importance:** | High |

FYI

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 1:55 PM
**To:** Martin Schlaepfer (MOF) ; Anna Strathy ; Kyle MacIntyre (MOF) ; Patrick Laughton (MOF) ; William Bromm (CAB)
**Subject:** Final Package for OAG
**Importance:** High

Hi All,
I've attached the final materials for the AG.

Please let me know ASAP if you have any concerns. Aiming to send very soon.

Thanks for all the great team work!
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | N |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y – please refer to enclosed document titled "20171003 1928" |

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so* ***<u>IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall</u>*** ~~*the government needs to borrow cash to cover the shortfall"*~~<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns and 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing estimates over the thirty year life of the program have been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers' electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure due diligence was completed." | N |

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Y – please refer to enclosed file titled "Email Evidence re LDC Option" |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y – please refer to enclosed reports |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | Y<br>Please refer to enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths) that may be shorter than the expected useful life of the assets). The difference between the | Annual Report |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>Finally, the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | N |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator*…" This statement is incomplete. The guidance in US GAAP is as follows: | N |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.<br>Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states: | Y - See hyperlink |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | "When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y – please refer to enclosed document titled "Letter to AG from IESO Board July 20, 2017" |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y – see hyperlinks |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | https://www.ontario.ca/laws/statute/98e15<br><br>https://www.ontario.ca/laws/statute/98o15 | |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

## GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN

The government of Ontario does not agree with the assertions and conclusions expressed in the report by the Office of the Auditor General (OAG) on *Ontario's Fair Hydro Plan (OFHP).*

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the report's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

The Global Adjustment (GA) pays for the bulk of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the report's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations <u>do not</u> create accounting rules or legislate the accounting. This is a

fundamental disagreement with the report. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

The OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting social programs to the tax base, and some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The report appears to suggest that all costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the report. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty -year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report does not reflect the technical substance of the OFHP, some of which has yet to be implemented.

**Ministry of Finance**

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

**Ministère des Finances**

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

**Treasury Board Secretariat**

Deputy Minister, Treasury Board
Secretary of Treasury Board and
Management Board of Cabinet

Room 5320, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1A1
Tel.: 416-325-1607
Fax: 416-325-1612

**Secrétariat du Conseil du Trésor**

Sous-ministre, Conseil du Trésor
Secrétaire du Conseil du Trésor et du
Conseil de gestion du gouvernement

Édifice Whitney, bureau 5320
99, rue Wellesley Ouest
Toronto (Ontario) M7A 1A1
Tél. : 416 325-1607
Téléc. : 416 325-1612

**Ministry of Energy**

Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**

Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario M5G 2C2

October 4, 2017

Dear Ms. Lysyk,

Thank you for the opportunity to review and provide feedback on your draft special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As per your letter to Deputy Thompson, dated September 26, 2017, our review focused on confirming the factual accuracy of the report. Please find enclosed succinct written comments and suggestions resulting from our ministries' coordinated review.

We have also enclosed a government response to the special report. Given the nature and the complexity of the issues, the response needed to be longer than the word limit you proposed.

As you know, as part of its preparations for the development of the implementation of the Government's Fair Hydro Act, Navigant Consulting was engaged to conduct analysis and prepare a report. The report was commissioned in June 2017 and completed at the end of September 2017. Although the report was not commissioned as a result of your audit or to respond to any questions raised by your office as part of your audit process, we believe it does contain information relevant to your audit. As per your letter which noted that we should share any other information that may be relevant, we felt it would be appropriate to share a confidential copy of the report with your office while we continue to assess whether the report will be made public.

.../con't

Once your office has had the opportunity to review the enclosed information, you may find it useful to have further meetings with ourselves and/or staff from our ministries. We will be pleased to make ourselves available to provide clarification or to answer any additional questions. Our Ministers are also available to meet with you to discuss your report and the government response during the week of October 9th.

The Ministry of Finance, Treasury Board Secretariat and the Ministry of Energy are committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

Sincerely,

Scott Thompson
Deputy Minister
Ministry of Finance

Helen Angus
Deputy Minister
Treasury Board Secretariat

Serge Imbrogno
Deputy Minister
Ministry of Energy

**Ministry of Energy**
Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**
Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ontario

**MEMORANDUM**

| | |
|---|---|
| MEMORANDUM TO: | Bonnie Lysyk<br>Auditor General of Ontario |
| FROM: | Serge Imbrogno, Deputy Minister<br>Ministry of Energy |
| SUBJECT: | Auditor General Request |
| DATE: | **October 3, 2017** |

As I committed to do in my September 1, 2017 letter, I am writing to update you on the progress of the Ministry of Energy in responding to your request for communications and material on the accounting/financing for the Fair Hydro Plan for the period from December 1, 2016 to May 31, 2017.

As you are aware, Ministry staff are currently engaged in a manual review of 144,513 records identified for us by McCarthys/Wortzmans in order to eliminate non-responsive material. As of today we have reviewed a total of 30,206 records and identified a total of 6,940 responsive to your request. Ministry staff identified 1,837 records as responsive since the last batch (fourth batch) and PDF versions of this batch (fifth batch) of responsive records are included on the enclosed USB. The password to the enclosed password-protected USB is "FairHydro17". Additional batches will be provided to you as they become available. The Ministry has thus far spent $41,775.75 on preparing these materials and does not intend to spend more than $60,000 on this request.

Some of the documents included on the USB contain information that is subject to solicitor-client privilege. Some documents have formed part of various submissions to Treasury Board and to Cabinet and are therefore Cabinet confidential. It is not our intention to waive any solicitor-client and/or Cabinet privilege attaching to the disclosed material. However, in light of the urgency of your request, we have not attempted to specifically highlight all such privileged information for you. For this reason, we would appreciate the opportunity to review any of our documents or information that you intend to reproduce publicly in order to identify any privilege concerns.

I assure you that this process remains a high priority for the Ministry. Should you have any questions or would like to discuss further, please feel free to contact Martin Schlaepfer at (416) 326-7688.

Sincerely,

Serge Imbrogno

c: Maud Murray, Legal Director, Legal Services Branch

NAVIGANT

# Assessment of the Alignment of the Costs and Benefits of Clean Energy Assets

**Prepared for:**

Blakes

***Prepared by:***
Navigant
Bay Adelaide Centre
333 Bay Street, Suite 1250
Toronto, Ontario M5H 2R2

navigant.com

Reference No.: 195515
September 29, 2017

Privileged and Confidential
Attorney-Client Communication/Attorney Work Product
Prepared at the Direction of Legal Counsel

# TABLE OF CONTENTS

**Glossary** ..... iii

**1. Overview** ..... 1

**2. ReAllocation Methodology** ..... 2

**3. Estimating the fair allocation curve** ..... 3

3.1 Status Quo Costs ..... 3
3.2 Fair Allocation Curve without Interest ..... 4
3.3 Debt Schedule and Interest Costs ..... 5
3.4 Fair Allocation Curve with Interest ..... 6

**4. Adjustments for 2005 to 2017** ..... 7

4.1 Overpayment Balance ..... 7
4.2 Adjusted Debt Schedule and Interest Costs ..... 8
4.3 Adjusted Fair Allocation Curve ..... 9
4.4 Net Reduction in Consumer Costs ..... 10

*Disclaimer*
*This report was prepared by Navigant Consulting Ltd. for Blake, Cassels & Graydon LLP for the purpose of informing legal advice from Blakes to the Ontario Ministry of Energy.*

*The work presented in this report represents Navigant's professional judgment based on the information available at the time this report was prepared. Navigant is not responsible for the reader's use of, or reliance upon, the report, nor any decisions based on the report. NAVIGANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.*

*Readers of the report are advised that they assume all liabilities incurred by them, or third parties, as a result of their reliance on the report, or the data, information, findings and opinions contained in the report.*

# GLOSSARY

**Clean energy benefits**: the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs

**Clean energy costs:** the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,
(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,
    (i) renewable energy generation or capacity,
    (ii) conservation and demand management,
    (iii) energy storage,
    (iv) energy efficiency,
    (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the Ontario Energy Board Act, 1998 and excluding such other contracts as may be prescribed,
(b) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998, and
(c) such other costs or estimated costs as may be prescribed;

**Clean energy initiative**: the policies of the Government of Ontario related to,
(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,
(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,
(c) promoting conservation, demand management and energy efficiency, and
(d) investing in energy infrastructure to ensure a clean, modern and reliable system;

**Fair Hydro Act:** A statute [or act] of the Legislative Assembly of Ontario designed to align clean energy costs with clean energy benefits.

# 1. OVERVIEW

Blake, Cassels & Graydon LLP (Blakes) retained Navigant Consulting Ltd. (Navigant), for the purpose of informing legal advice from Blakes to the Ontario Ministry of Energy. Blakes retained Navigant to:

1. Evaluate the extent to which clean energy costs are incurred over the same period as clean energy benefits;
2. Establish a methodology to reallocate clean energy costs to fully align with clean energy benefits;
3. Assess the associated refinancing costs; and
4. Develop an adjustment mechanism to account for differences between reallocated costs and actual costs prior to the implementation of the Fair Hydro Act.[1]

This analysis builds off the Navigant report *Assessment of the Operability of Clean Energy Assets Post Power Purchase Agreement Expiry* ("Asset Life Report"), which evaluated the feasibility of operating clean energy assets such as natural gas, wind, and solar power generation facilities beyond the term of their existing power purchase agreements, and the associated costs. Navigant determined that natural gas facilities in Ontario can operate for 40 years with prudent maintenance and some component replacement. Navigant also determined that wind and solar facilities can operate for 25 years, which can be extended to 50 years with a full repowering investment at the end of year 25.

Ontario ratepayers currently pay for the entire cost of constructing a natural gas, wind, and solar electricity generation asset over the term of their original power purchase agreement, which is generally 20 years. Provincial ratepayers pay for conservation programs in the year the costs are incurred. Similarly, over the period of 2009 to 2014, ratepayers made annual payments associated with the early shutdown of coal fired-generation assets.

However, the benefits associated with the natural gas, wind, and solar electricity generation assets are tied to their full useful life, which extends beyond the term of the original power purchase agreement. Similarly, the benefits associated with conservation and the early retirement of coal-fired electricity generation assets are tied to the avoided electricity generation and the avoided emissions, respectively. These benefits occur over the entire life of the conservation measures and the expected remaining life of retired coal-fired generation assets.

[1] Clean energy costs and clean energy benefits are as defined in the Fair Hydro Act, 2017.

# 2. REALLOCATION METHODOLOGY

The Fair Hydro Act allows for the reallocation of clean energy costs to 2047. As a result, Navigant's methodology only considers clean energy costs incurred between 2005 and the earlier of a clean energy assets end of life or 2047.

Navigant's methodology includes five major components.

### 1. Status Quo Costs

Develop a schedule of status quo costs for individual assets or groups of assets with similar characteristics (i.e. contract price, first year of operation, technology, fuel-type). The status quo clean energy costs include power purchase agreement payments, as well as ongoing operations and maintenance costs and repowering costs beyond the term of the power purchase agreement.

Determine the total cost associated with an individual asset or group of assets in the status quo from its commercial operation date, or the date the investment was made, until the earlier of the asset's end of life or 2047.

### 2. Fair Allocation Curve without Interest

Reallocate the total cost evenly over each year the asset is operational, or providing a clean energy benefit. Note this step assumes that costs can be reallocated without incurring additional debt or financing costs. The total cost in each year across all the clean energy assets is the fair allocation curve without interest costs ("FAC w/ No Interest Cost").

### 3. Debt Schedule and Interest Costs

In each year, the difference between the total status quo clean energy costs and the fair allocation curve without interest amount, represents the annual borrowing requirement (in early years) or principal repayment (in later years) associated with the reallocation of costs.

### 4. Fair Allocation Curve with Interest

The annual interest costs associated with the accumulated debt is added to the fair allocation curve without interest to determine the total cost to be passed through to ratepayers under the reallocation. The sum of the fair allocation amount without interest and the annual interest cost represents the fair allocation curve with interest ("FAC w/ Interest").

### 5. Fair Allocation Curve with Adjustment Period and Interest

Recognizing that consumers have paid the status quo costs since 2005, establish the amount of overpayment / underpayment that has occurred relative to the fair allocation curve with interest and use this overpayment / underpayment to adjust the fair allocation curve to reflect the targeted reductions eligible consumer costs under the Fair Hydro Act.

# 3. ESTIMATING THE FAIR ALLOCATION CURVE

This section describes the outcome of each of the first four components of the reallocation methodology described above.

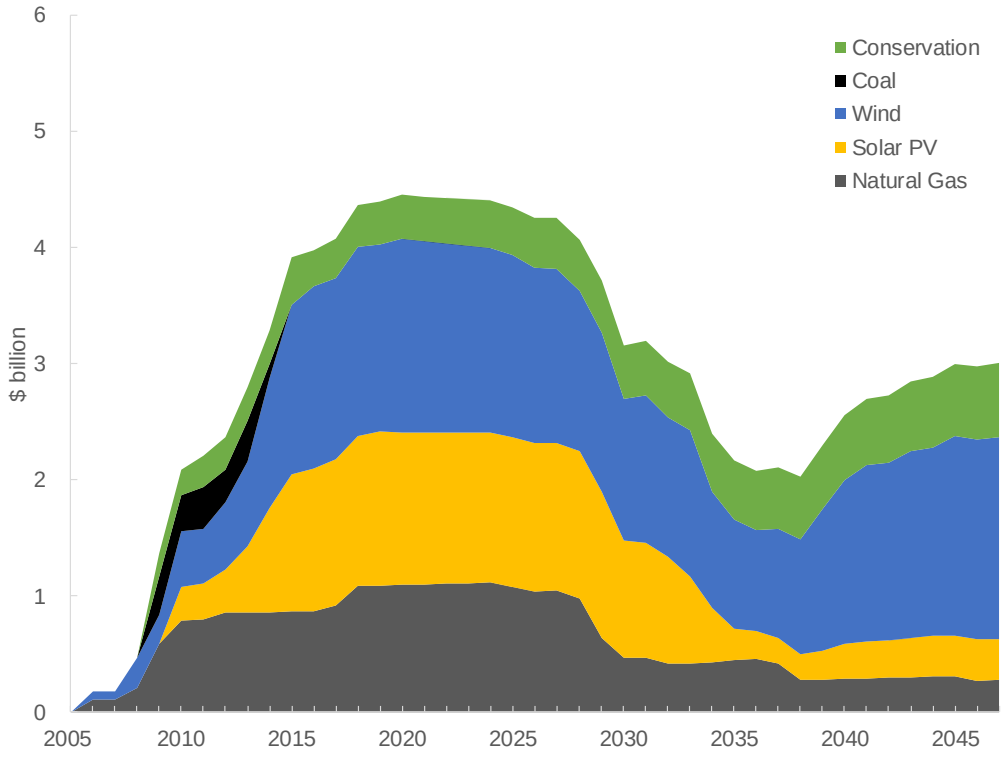
## 3.1 Status Quo Costs

The status quo costs for natural gas, wind, and solar photovoltaic generation resources are based on the terms of each assets' power purchase agreements. These costs were estimated based on known and estimated power purchase agreement prices and estimated production or contracted capacity levels. Following the expiry of the power purchase agreements, the status quo costs include estimated operating and maintenance expenditures and annual costs associated with the financing of any repowering costs.

The status quo costs also include the costs of conservation and demand management programs, and the costs (payments made by ratepayers) associated with the early shutdown of coal fired-generation assets. These costs are based on actual spending levels through 2016 and estimated spending levels through 2047.

As illustrated in the figure below, status quo costs are expected to peak at over CAD $4 billion in the 2020s and then decline in the 2030s as generation resources reach the end of the original term of their power purchase agreements. By the late 2030s repowering investments in wind, and to a lesser extent solar, put upward pressure on status quo costs.

**Figure 1. Status Quo Costs (nominal CAD)**




*Note: Analysis assumes a 2.0% annual inflation rate*
*Source: Navigant analysis*

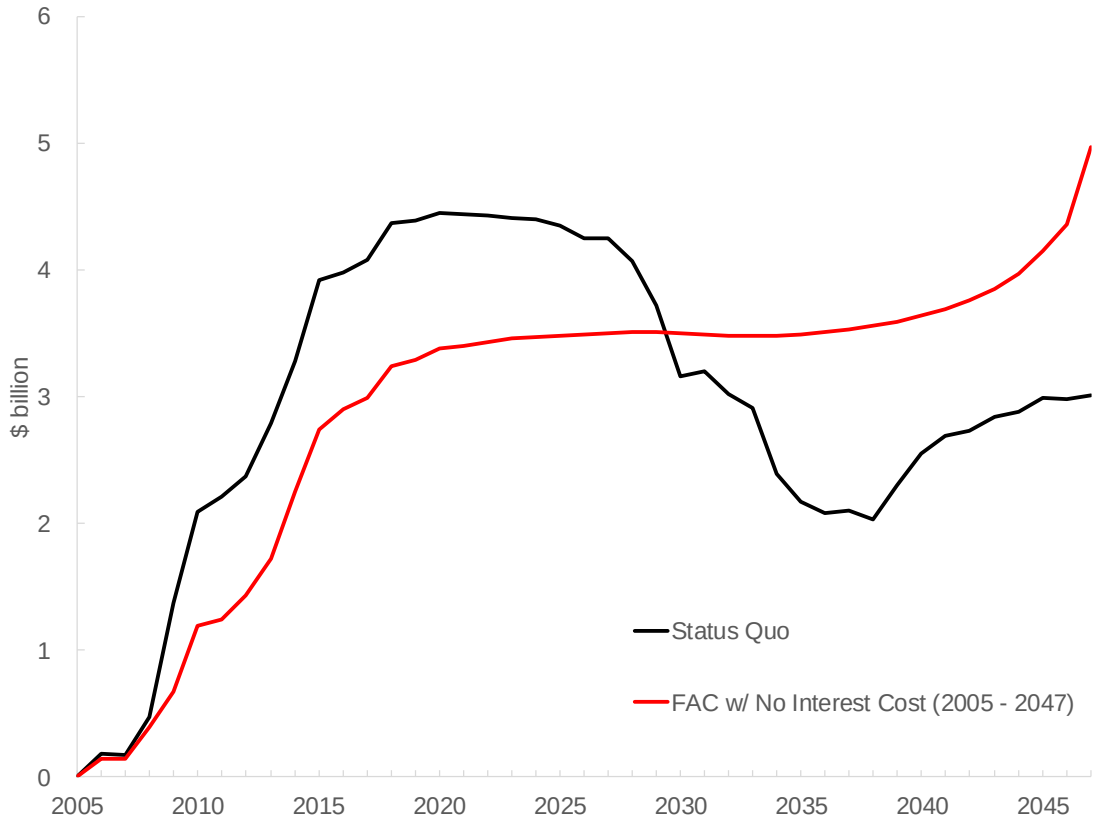
## 3.2 Fair Allocation Curve without Interest

Total status quo costs incurred between 2005 and 2047 for each asset were reallocated evenly over the useful life of each asset. The reallocation is carried out on an asset by asset or asset group by asset group basis and then aggregated to determine the total province-wide impact. This results in the fair allocation curve without interest.

As illustrated in the figure below, from 2005 to 2029, the status quo is higher than the fair allocation without interest. From 2030 onwards, the status quo is below the fair allocation without interest.

Both the status quo and fair allocation curve without interest ramp up significantly between 2005 and 2020. This is due to the increase in the number and size of clean energy assets, in particular natural gas, wind, and solar generation facilities, which increase to over 14,000 MW by 2020.

**Figure 2. Fair Allocation Curve without Interest**




*Source: Navigant analysis*

## 3.3 Debt Schedule and Interest Costs

The status quo costs represent existing obligations. Changing the amount of that obligation that is paid by ratepayers annually either results in a requirement to borrow funds to cover an underpayment or a credit of funds to recognize an overpayment.

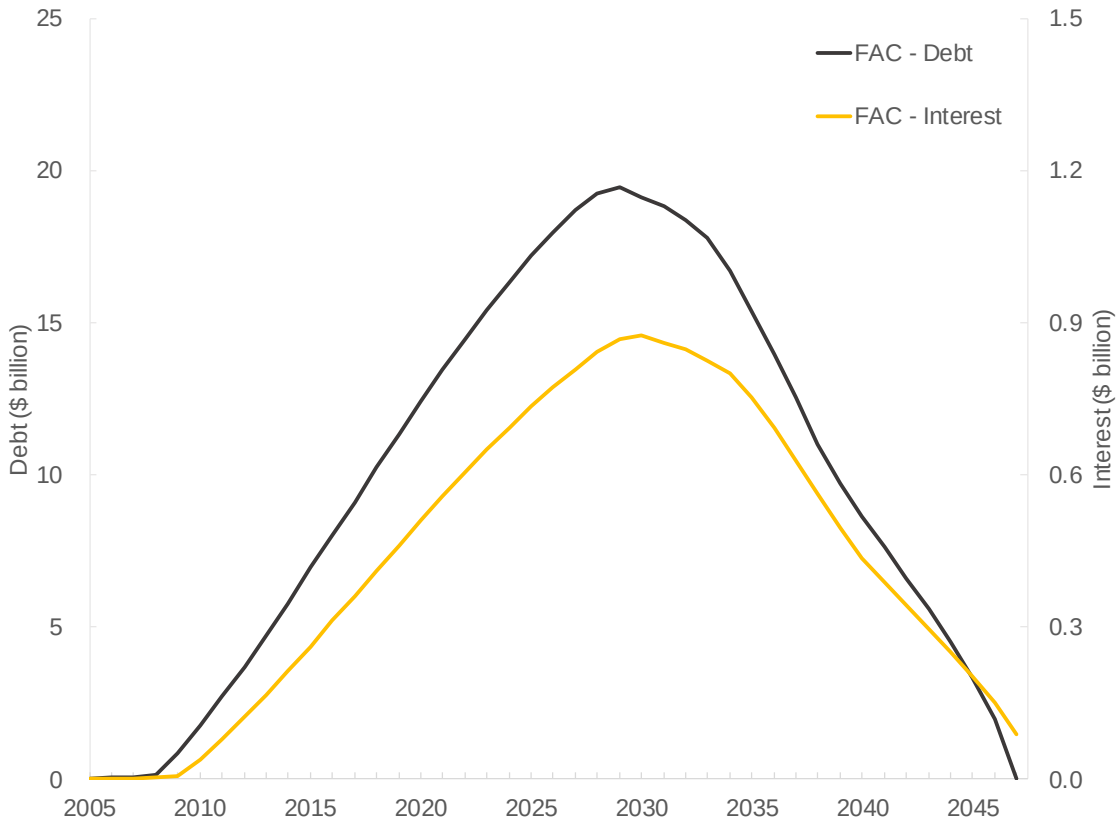
The difference between the status quo and the fair allocation curve without interest represents annual borrowing requirement (in early years) or principal repayment (in later years) required to finance the reallocation of costs on behalf of Ontario ratepayers.

As debt is accumulated in each year, the interest payments on the accumulated debt can either be passed through to customers or carried forward to future years and increase the level of accumulated debt. Navigant has modeled the impact of the reallocation on the basis that interest payments are passed through to ratepayers in the year they are incurred.

As illustrated in the figure below, accumulated debt increased to approximately CAD $19.5 billion by 2029 and the annual interest payment increases to approximately CAD $875 million over the same period.

At the end of 2047, all debt and interest costs associated with the fair allocation are paid off and ratepayers return to the status quo payment stream starting in 2048.

**Figure 3. Accumulated Debt and Annual Interest Amounts**

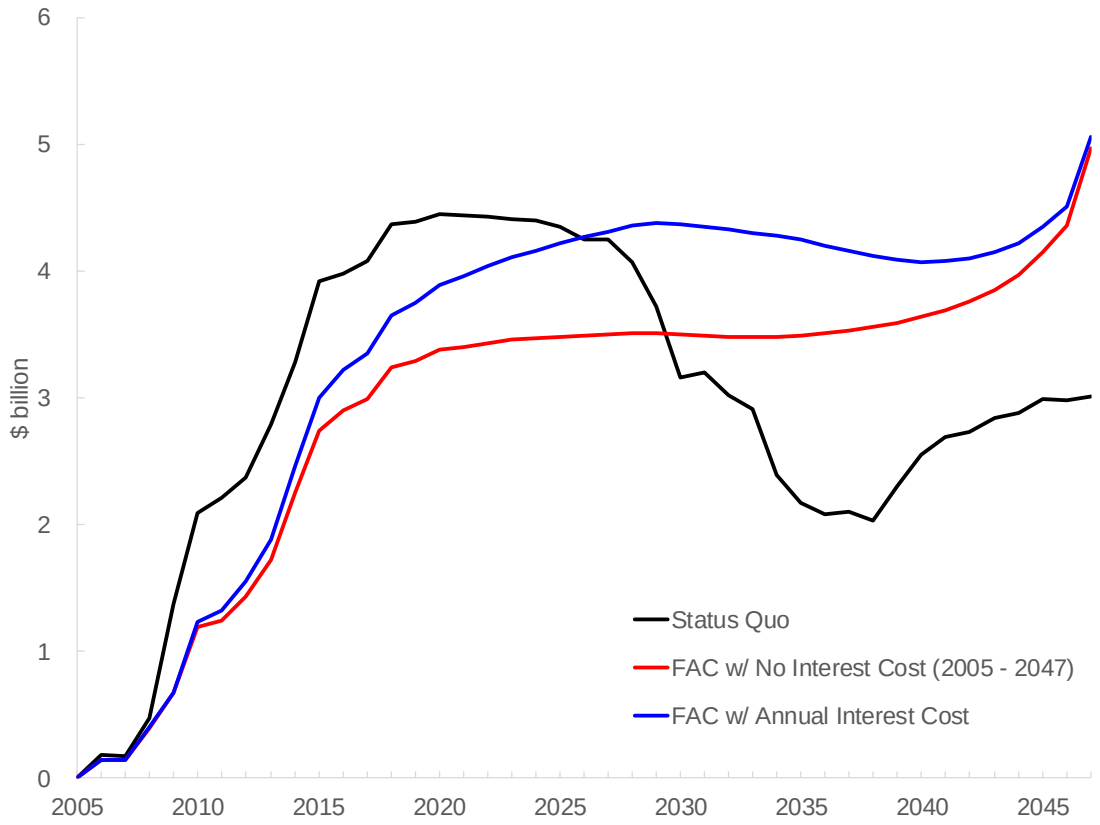



*Note: Analysis assumes a 4.5% cost of debt*
*Source: Navigant analysis*

## 3.4 Fair Allocation Curve with Interest

Layering the annual interest costs on top of the fair allocation curve without interest results in a fair allocation curve with interest costs. This represents the total reallocated cost in each year to be passed on to Ontario ratepayers.

**Figure 4. Fair Allocation Curve with Interest Costs**



# 4. ADJUSTMENTS FOR 2005 TO 2017

This section describes the outcome of the fifth component of the reallocation methodology described above.

Since 2005 ratepayers in Ontario have paid the status quo costs. As illustrated in the figure above, these costs were higher than the fair allocation curve with interest. The accumulated overpayment, including interest to the benefit of ratepayers, from 2005 up to the end of 2016 represents the amount that can be used to achieve the target reduction in eligible consumer costs under the Fair Hydro Act.

## 4.1 Overpayment Balance

From 2005 to the end of 2016, considering interest accrued on overpayments, ratepayers overpaid relative to the fair allocation with interest by approximately CAD $8 billion. This overpayment balance represents the amount that can be used to achieve the target reduction in eligible consumer costs in 2017 ($1.396 billion), 2018 ($2.189 billion), 2019 ($2.296 billion), 2020 ($2.414 billion) and 2021 ($2.204 billion). At the end of 2021, there remains an overpayment balance of approximately CAD $2 billion. This amount is repaid to customers over the next three years in a manner that limits the year-over-year rate increase. By the end of 2023 the overpayment balance is completely depleted.

**Figure 5. Overpayment Balance**

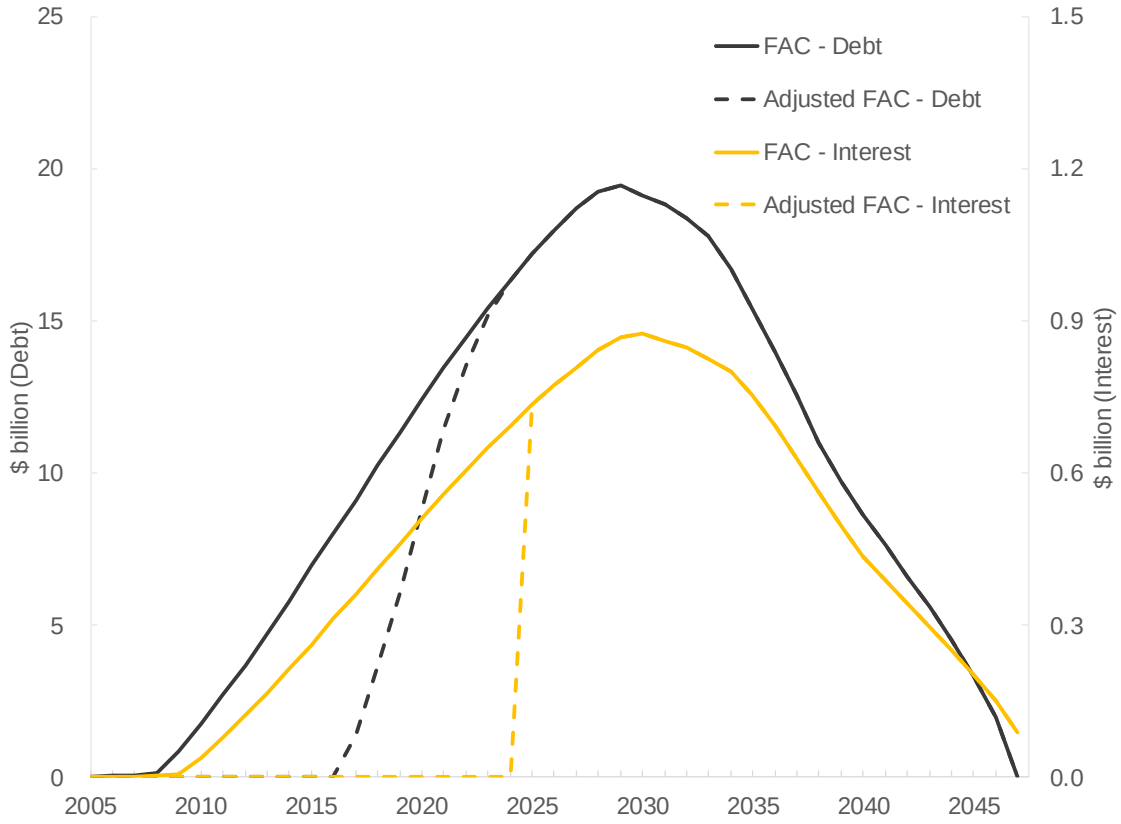
*Source: Navigant Analysis*

## 4.2 Adjusted Debt Schedule and Interest Costs

The fact that ratepayers paid the status quo costs from 2005 through 2016, and the overpayment balance will be used to provide deeper reductions in eligible consumer costs between 2017 and 2022 changes the debt schedule and interest costs relative to the fair allocation described earlier in this report.

No incremental debt was accumulated through 2016, because ratepayers paid the status quo costs. From 2017 to 2024, incremental debt will accumulate faster as the overpayment balance is depleted. Over the period where the overpayment balance is depleted, interest costs are carried forward to future years and increase the level of accumulated debt[2]. As illustrated in the figure below, starting in 2025, after the adjustment period, both the accumulated debt and the annual interest payments return to the same level as in the fair allocation described earlier in this report.

**Figure 6. Adjusted Accumulated Debt and Annual Interest Amounts**




*Note: Analysis assumes a 4.5% cost of debt.*
*Source: Navigant Analysis*

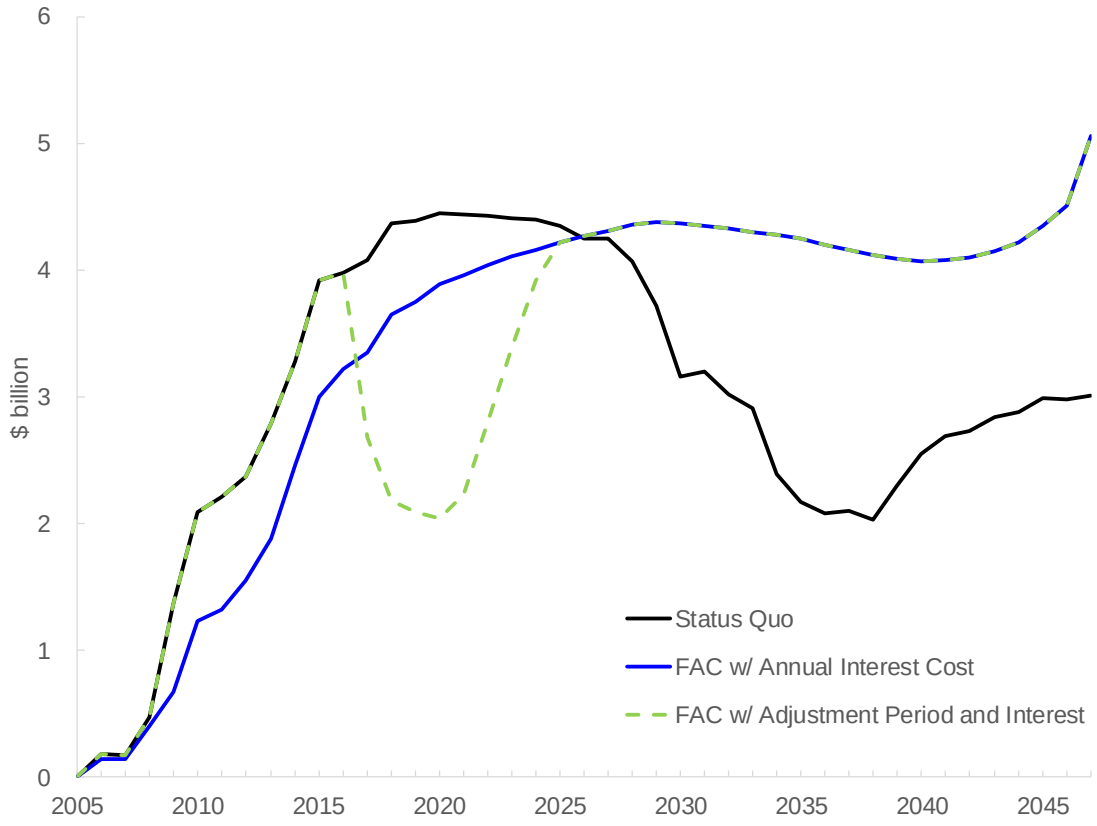
[2] Accumulating the interest costs during the adjustment periods allows ratepayers to realize the full target reductions under the Fair Hydro Plan.

## 4.3 Adjusted Fair Allocation Curve

The adjusted fair allocation curve with interest follows the status quo costs through 2016. Starting in 2017, based on the targeted reduction in eligible consumer costs under the Fair Hydro Act, it drops below the unadjusted fair allocation curve with interest. It remains below during the adjustment period until 2025 when the overpayment balance is depleted and the accumulated debt and annual interest costs return to unadjusted levels.

From 2025 onwards the levels of accumulated debt are consistent with the reallocation described earlier in this report and the interest costs are passed through annually to ratepayers. As a result, from 2025 onwards the actual adjusted fair allocation curve with interest is the same as the unadjusted fair allocation curve. This is illustrated in the figure below.

**Figure 7. Fair Allocation Curve with Adjustment Period and Interest**

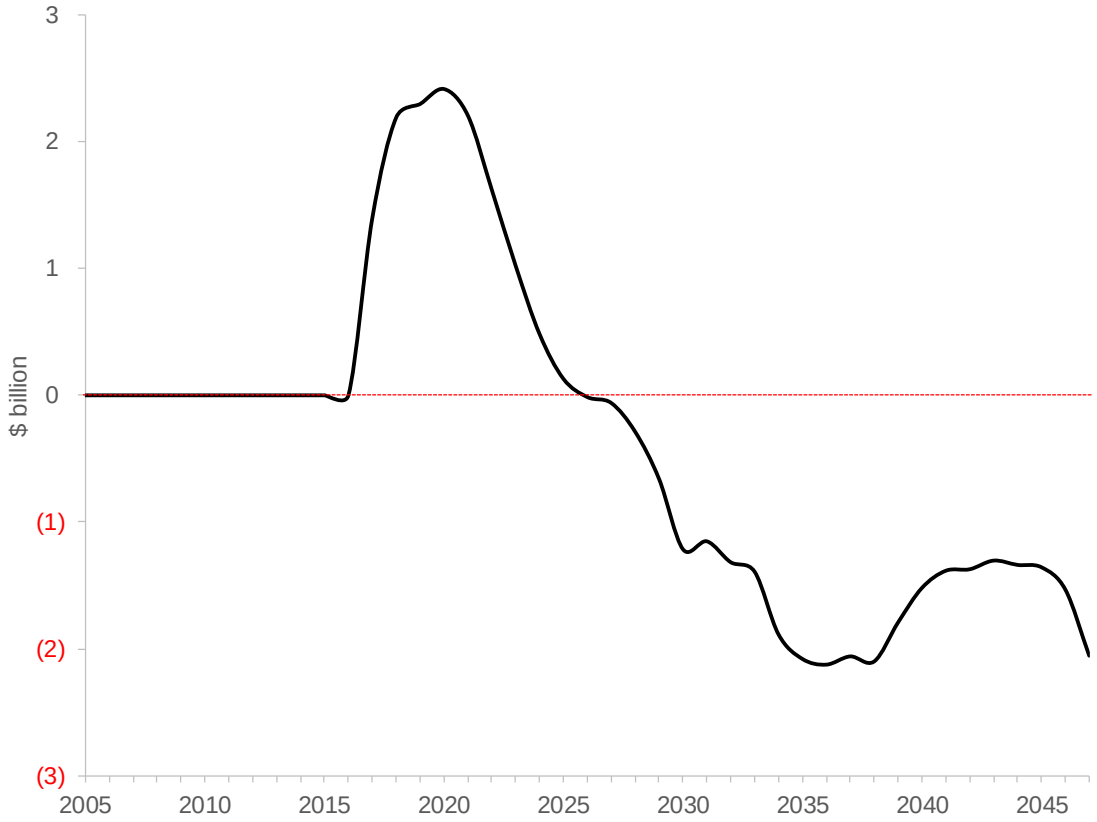



*Source: Navigant analysis*

## 4.4 Net Reduction in Consumer Costs

The difference between the status quo costs and the fair allocation curve with the adjustment period and interest costs represents the annual net reduction (positive) and increase (negative) in eligible consumer costs and is illustrated in the figure below.

**Figure 8. Annual Reduction (+) / Increase (-) in Eligible Consumer Costs**




*Source: Navigant analysis*

NAVIGANT

# Assessment of the Operability of Clean Energy Assets Post Power Purchase Agreement Expiry

**Prepared for:**

Blakes

**Prepared by:**
Navigant
Bay Adelaide Centre
333 Bay Street, Suite 1250
Toronto, ON M5H 2R2

navigant.com

Reference No.: 195515
September 29, 2017

Privileged and Confidential
Attorney-Client Communication/Attorney Work Product
Prepared at the Direction of Legal Counsel

# TABLE OF CONTENTS

**Glossary** ..... iii

**1. Overview** ..... 1

**2. Technical Feasibility of Lifetime Extension for Clean Energy Assets** ..... 2

2.1 Planning and Design Experience ..... 2
2.1.1 Natural Gas ..... 2
2.1.2 Wind ..... 4
2.1.3 Solar ..... 4
2.1.4 Current State of Operating Fleet ..... 5
2.1.5 Component Failure Rates and Operating Life ..... 13
2.2 Leasing, Regulatory, and Contract Issues ..... 19
2.2.1 Leasing Structure ..... 19
2.2.2 Regulatory Issues ..... 19

**3. Cost of Lifetime Extension and Repowering** ..... 21

3.1 Repowering and Extension Options ..... 21
3.1.1 Life Cycle of Plants under Normal Operations and Maintenance ..... 21
3.1.2 Cost of Repowering for Lifetime Extension ..... 22
3.2 Leasing, Regulatory, and Other Costs ..... 26

**4. References** ..... 27

***Disclaimer***
*This report was prepared by Navigant Consulting Ltd. for Blake, Cassels & Graydon LLP on behalf of the Ontario Ministry of Energy.*

*The work presented in this report represents Navigant's professional judgment based on the information available at the time this report was prepared. Navigant is not responsible for the reader's use of, or reliance upon, the report, nor any decisions based on the report.* ***NAVIGANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED****.*

*Readers of the report are advised that they assume all liabilities incurred by them, or third parties, as a result of their reliance on the report, or the data, information, findings and opinions contained in the report.*

# GLOSSARY

**Clean energy benefits**: the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs

**Clean energy costs:** the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,
(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,
    (i) renewable energy generation or capacity,
    (ii) conservation and demand management,
    (iii) energy storage,
    (iv) energy efficiency,
    (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the Ontario Energy Board Act, 1998 and excluding such other contracts as may be prescribed,
(b) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998, and
(c) such other costs or estimated costs as may be prescribed;

**Clean energy initiative**: the policies of the Government of Ontario related to,
(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,
(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,
(c) promoting conservation, demand management and energy efficiency, and
(d) investing in energy infrastructure to ensure a clean, modern and reliable system;

**Fair Hydro Act:** A statute [or act] of the Legislative Assembly of Ontario designed to align clean energy costs with clean energy benefits.

# 1. OVERVIEW

Blake, Cassels & Graydon LLP (Blakes) retained Navigant Consulting Ltd. (Navigant), for purposes of informing legal advice from Blakes to the Ontario Ministry of Energy, to determine the feasibility of operating clean energy assets past the original power purchase agreement term and the associated costs. The analysis considered a subset of clean energy assets, namely natural gas, wind, and solar electricity generation facilities under contract with Ontario's Independent Electricity System Operator (IESO).

Two primary questions are addressed in this report.

1) What is the technical feasibility of operating clean energy assets beyond the original twenty-year power purchase agreement term?
2) What are the costs of operating the clean energy assets over their useful life, considering prudent maintenance and repowering expenditures, which would be borne by ratepayers after the twenty-year power purchase agreement term?

Ontario's natural gas-fired electricity generating facilities are expected to operate for 40 years with prudent maintenance and capital expenditure. Ontario's wind and solar electricity generating facilities are expected to operate for 25 years, or 50 years provided they undergo a major repowering (or refurbishment) in and around year 25.

The second question determines the costs, in addition to the payments under the original power purchase agreements that would be borne by Ontario ratepayers if the clean energy assets operated over their entire useful life. These costs cover on-going operations and maintenance, as well as repowering and/or major maintenance as required. A table of important technology assumptions is provided in Table 1-1.

**Table 1-1 Clean Energy Asset Technology Assumptions**

| Technology | Parameter | Value |
|---|---|---|
| Natural Gas | Repowering Cost (2017$/kW) | Plant-Specific |
| Natural Gas | Year 1 Fixed O&M (2017$/kW-yr) | Plant-Specific |
| Wind | 2040 Repowering Cost (2017$/kW) | $2,300 |
| Wind | Year 1 Fixed O&M (2017$/kW-yr) | $49 |
| Wind | Fixed O&M Escalation | 2% |
| Wind | Initial Capacity Factor | 32% |
| Wind | Repowered Capacity Factor | 37% |
| Wind | Capacity Factor Degradation | 1.6% |
| Solar | 2040 Repowering Cost (2017$/kW) | $930 |
| Solar | Year 1 Fixed O&M (2017$/kW-yr) | $27 |
| Solar | Fixed O&M Escalation | 2% |
| Solar | Initial Capacity Factor | 16% |
| Solar | Repowered Capacity Factor | 16% |
| Solar | Capacity Factor Degradation | 0.5% |

*Source: Navigant analysis*
*Note: Values presented in the table have been rounded to the nearest 10 or 100*

# 2. TECHNICAL FEASIBILITY OF LIFETIME EXTENSION FOR CLEAN ENERGY ASSETS

This section outlines the assumptions and research underlying the expected lifetimes for the clean energy analysis. It is broken into three subsections, exploring (1) standard practice and experience when planning and designing clean energy assets, (2) the state of the Ontario fleet, and (3) leasing, regulatory, and contract issues associated with lifetime extension. Each of these subsections is further divided between natural gas, wind, and solar assets. The expected lifetimes were formulated using a combination of interviews, literature review, and consulting publicly available and Navigant proprietary databases.

Overall, no significant leasing, regulatory, or contract issues were identified which would limit lifetime extension. Navigant ultimately identified a useful life of forty years for the natural gas assets (with partial repowering in some cases), and a useful life of twenty-five years for solar and wind assets (with another twenty-five years possible after full repowering), after investigating the design and component failure rates and replacement costs for these asset classes.

## 2.1 Planning and Design Experience

### *2.1.1 Natural Gas*

Power stations utilizing natural gas are most frequently developed assuming a twenty-year life of the plant design, which is often dictated by the terms of commercial contracts. The actual plant life, however, can exceed forty years if the operator follows prudent operations and maintenance (O&M) practices and the recommend repair and replacement intervals for combustion turbine hot section components and balance of plant equipment.

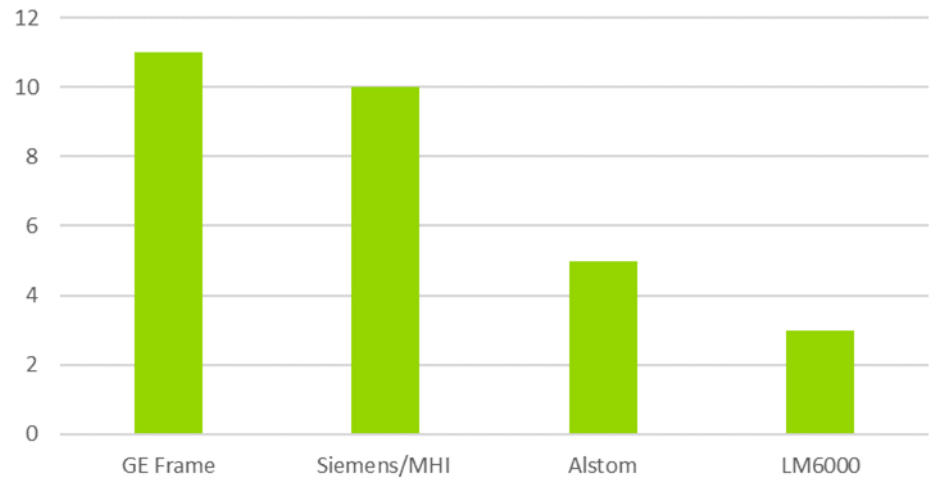
Most recently constructed natural gas power stations in Ontario (and throughout North America) utilize combustion turbines as the prime mover, either in simple cycle or combined cycle configuration. In simple cycle configuration, the combustion turbine directly drives a generator, requiring relatively fewer pieces of equipment, which lowers the cost per kilowatt (kW) of capacity. In combined cycle configuration, the exhaust heat from the combustion turbine is recovered in a heat recovery steam generator which produces steam to drive a steam turbine generator. This maximizes efficiency of the energy conversion of natural gas to electricity, but at a higher installed capacity cost than simple cycle configuration. In addition, some plants in Ontario were designed for co-generation, where a percentage of the steam produced in the combined cycle application is delivered and used in non-electric processes.

The three types of units discussed above, simple cycle, combined cycle and co-generation, have different design parameters. The simple cycle units are fast-starting units that are designed for peaking applications to either stabilize the electrical grid with ancillary services, or to provide energy to the grid during times of high demand. Simple cycle units are typically designed for a low number of starts, less than fifty per year and are generally operated by a small operations staff.

There are 29 combustion turbines at the 16 gas-fired power stations in Ontario, of which the units at thirteen were included in the model analysis (the remainder were in service prior to 2005, the analysis start year). Twenty-six of Ontario's combustion turbines are heavy frame type units and three are aero derivative units. The frame turbines include the Frame 7 series manufactured by General Electric (GE), the 501F/G series manufactured by Siemens/Mitsubishi Heavy Industries (MHI), and the GT11 series manufactured by Alstom. The three aero derivative turbines are all versions of the LM6000 turbine

manufactured by GE. The distribution of Ontario's gas-fired combustion turbine manufacturers is shown in Figure 2-1 below.

**Figure 2-1 Ontario Combustion Turbines by Manufacturer**




*Source: SNL, ABB Energy Velocity, and Navigant Analysis*

The major maintenance and combustion turbine parts purchases are covered under long-term service agreements or contractual service agreements with the original equipment manufacturer. These agreements are very specific and require that the combustion turbines be stopped and maintenance be conducted at the required intervals specified by the manufactures.

Combined cycle units were initially envisioned in the early 1990's as baseload power stations, however over time they changed to mid-merit units that assume load when renewable generation drops off and during periods of high demand. Though slower to start than simple cycle units, combined cycle units can still be brought online quickly to provide larger amounts of energy to the grid than simple cycle units. Given the mid-merit dispatch of these units, combined cycle units are typically designed to start between 150-250 times per year.

Co-generation units are highly efficient and either deliver part of the steam from the heat recovery steam generator to a steam host, or in the case of combined heat and power units, use the steam to generate hot water or cold water for various heating and/or cooling applications. Co-generation units are typically designed for baseload operations (less than 10 starts per year) to serve the steam host, and can meet the steam demand while fluctuating the amount of power generated.

Over the last 15 years the rate of natural gas fired power station development has increased due to lower natural gas prices, environmental regulations (including $CO_2$ reduction mandates), and the increasing value of flexibility for renewable generation firming. With the growing penetration of renewable energy sources in the Ontario market Navigant has observed that natural gas stations have shifted from principally being dispatched during the day time to cover peak loads to being principally dispatched to firm renewable energy and maintain reliability during periods when wind and solar power plants drop off.

As units reach the end of their power purchase agreements (usually 20 years), they have many lifetime extension options available. As mentioned, combustion turbines can operate for 40 years if proper operations and maintenance practices have been followed. Most combustion turbines have a major inspection that is required on the turbine rotors at either 200,000 factored fired hours/equivalent base

hours or 5000 factored starts. The rotor is pulled, disassembled, and inspected to determine if there has been damage to the turbine wheels; when this is complete the rotors are reassembled and can be certified for another 100,000 hours of operations. Given the dispatch regime of units analysed, most the units did not reach this milestone during the first 20 years of operation, and some units did not require it over a forty-year operating life. The heat recovery steam generators can also be operated for more than 20 years with proper repairs and replacement of components in the heat affected zones, the super-heater sections, and high flow rate areas such as the economizer. Steam turbines and generators also have expected lives of at least 40 years if the proper maintenance and inspections are conducted at the recommended intervals.

Given the concurrent expected life of 40 years for combustion turbines, steam turbines, and generators Navigant believes a general expected life of 40 years for natural gas plants is appropriate. Section 2.1.4.1 discusses in more detail current state of Ontario's natural gas fleet to determine if the general expected life is a reasonable assumption.

### *2.1.2 Wind*

Until recently, wind plants were generally built with an expected operational life of 20 years. Today, many wind project developers have increased the expected operational life to 25 or even 30 years. This increase in the expected operational life of wind plants is reflective of reliability improvements in key components such as gearboxes, and that repairs and replacements to components can extend longevity of a wind plant.

The lifetime expectancy of individual components within a wind plant vary widely. The towers are mostly steel and last 50 to 100 years. The foundations and cables have similar lifetimes. The gearboxes generally last 5 to 7 years and therefore are replaced twice on average over a 20 year period. Lastly, blades generally last 10 to 12 years and therefore are replaced once on average over a 20 year period.

Furthermore, the accuracy of wind plant forecasts has improved over time. In the early years of the industry, plants consistently underperformed compared to forecasts of availability, reliability, and cost. More recently, cost and reliability forecasts have become more accurate due to technology advancements in manufacturing and operation of wind turbine components as well as the wealth of industry experience that is now available for forecasting purposes.

Most wind plants have decommissioning plans in place, as required either by lenders or leaseholder agreements. These plans generally call for complete removal of the equipment and reclamation of the land for a suitable use. However, most owners expect that the wind turbines will be either be refurbished (replaced with similar components) or fully repowered (replaced with larger components) at least once prior to the ultimate removal of equipment.

Given that core equipment components are likely to be replaced at least once during the first 20-years of operation of a facility and that typical planning and investment decisions are based on an assumed 25-year operation life, Navigant believes the general expected useful life for a wind facility is 25 years. Section 2.1.4.2 discusses in more detail current state of Ontario's wind resources to determine if the general expected life is a reasonable assumption.

### *2.1.3 Solar*

Solar facilities in Ontario have 20-year power purchase agreements, obtained through either the renewable energy standard offer program (RESOP), feed-in-tariff (FIT) or large renewable procurement

(LRP) programs. Twenty-year power purchase agreement terms are typical in the US and other markets, although some can be for less than 20 years.

Several public and private tools have become available to forecast production over the lifetime of a solar asset. Performance of solar facilities relies on key inputs such as system capacity, configuration (fixed tilt vs. single-axis or dual-axis tracker technology) and location. These forecasting models also account for losses due to shading and snow, as well as DC/AC losses. Over time, these models have become more sophisticated and more accurate, resulting in generation experience being consistent with planning assumptions.

As photovoltaic module technology progresses, the technical lifespan of panels has increased from 20 to 25 years, and even 30 years for more advanced models. The lifespan of other components has improved at a slower rate. Ground-mount racking is typically constructed of galvanized steel and aluminium with a 20-year warranty from the manufacturer. Standard warranties for inverters are typically 10 years in duration (an increase from the historical 5 years) with extended options available at extra cost. The technical lifetime for system wiring is typically 12 years. Therefore, inverters and wiring are replaced at least once on average over a 20-year lifetime.

Today, many solar project developers have increased the expected operational life to 25 years for planning and investment decisions. Decommissioning usually doesn't include equipment reuse, as the second set of inverters and wiring would be near end of life and panel technology is advancing quickly enough that it would likely not be reused either.

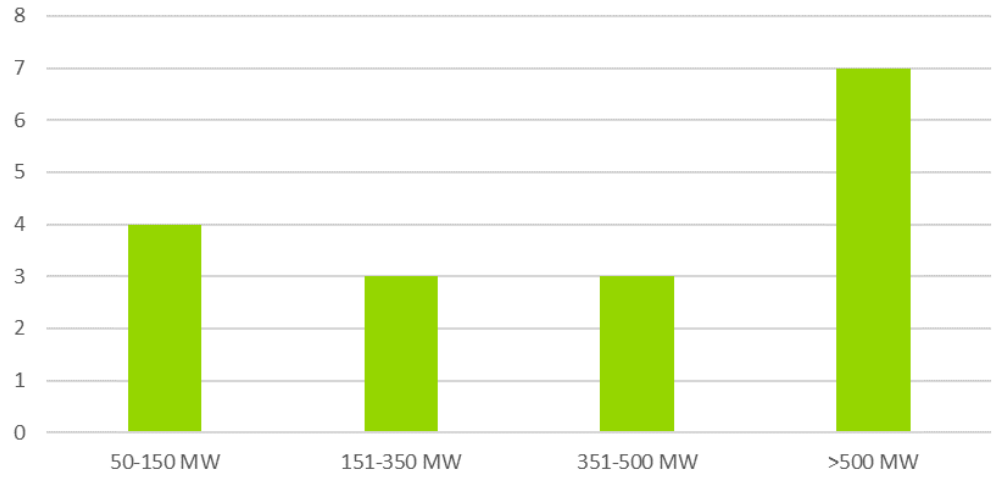
Given that core equipment components, such as inverters and wiring, are likely to be replaced at least once during the first 20-years of operation of a facility, and that the expected lifespan of the panels has increased along with the typical expected operational life for planning and investment decisions to 25-years, Navigant believed the general expected useful life for a solar facility is 25 years. Section 2.1.4.3 discusses in more detail current state of Ontario's solar fleet to determine if the general expected life is a reasonable assumption.

### *2.1.4 Current State of Operating Fleet*

#### *2.1.4.1 Natural Gas*

A total of 16 natural gas-fired power plants located in Ontario were evaluated with a total installed capacity of 7,291 MW. Of these, 13 plants were considered in this analysis as the remainder of the natural gas fired plants were in service prior to 2005. Most plants were combined cycle but some were also co-generation or simple cycle. The plants had installed capacities ranging from 73 MW to 1,005 MW, with the average installed capacity being 456 MW. The distribution of the natural gas-fired power plants by installed capacity can be seen in Figure 2-2 below.

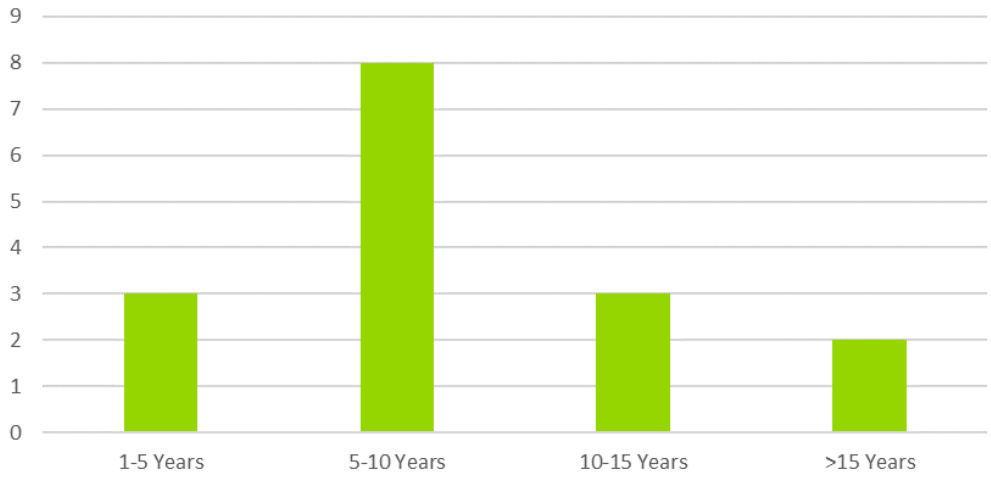
**Figure 2-2 Size Distribution of Gas-Fired Generating Stations in Ontario**




*Source: Navigant Analysis*

The average age of the gas-fired plants was nine years, with the oldest being the Cardinal Power Plant which is 23 years old and the newest being the Nappanee Generating Station which is under construction with a milestone commercial operation date of December 2018. Most plants have been in service for under 10 years, as shown in Figure 2-3 below.

**Figure 2-3 Age Distribution of Gas-Fired Generating Stations in Ontario**

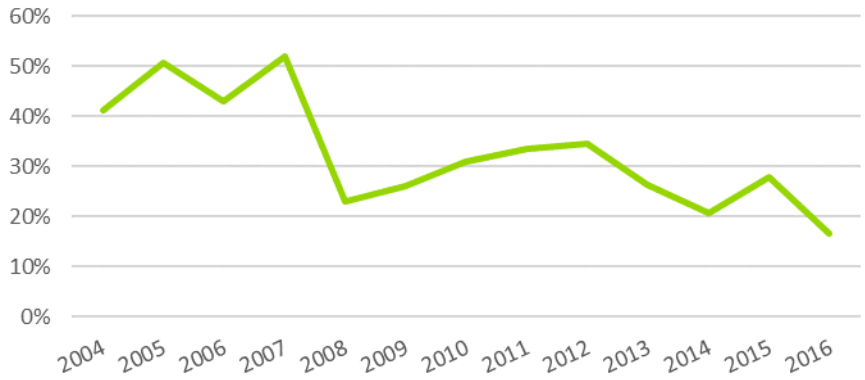



*Source: Navigant Analysis*

The net capacity factors for the different type of gas-fired power plants in Ontario have trended downward. Combined cycle units achieved a peak capacity factor in 2007, when there were only two units in commercial operation, of 52%. As more units came online after 2008 the net capacity factor dropped to the mid 20% range and rose through 2012 to 34%. Since 2012, however, the net capacity factor has shown a downward trend as demonstrated in Figure 2-4. Capacity factors have declined in recent years due to renewable builds, the return of some nuclear generating stations to service, low provincial load growth, and reduced power prices in neighbouring jurisdictions. These factors have been partially offset

by the retirement of Ontario's coal fleet, but reduced capacity factors in the later years of those stations limited the upside for the natural gas-fired fleet.

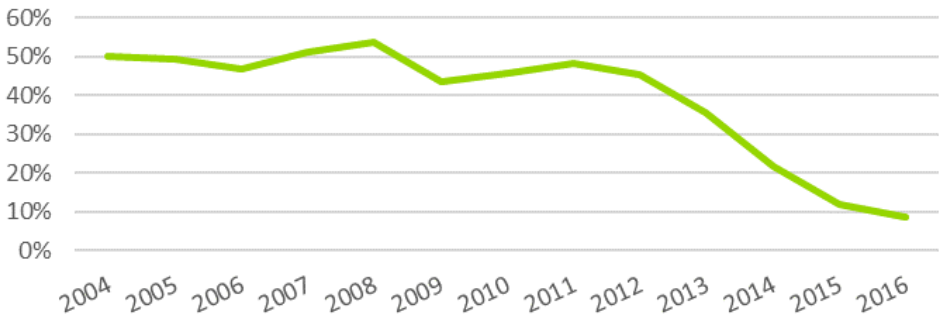
**Figure 2-4 CCGT Annual Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

Cogeneration units have also shown a similar trend in capacity factors. From 2004 through 2012, the capacity factor was almost flat at around 50%; however, since 2012, the net capacity factor has shown a steep decline to 9% in 2016 as shown in Figure 2-5 below.

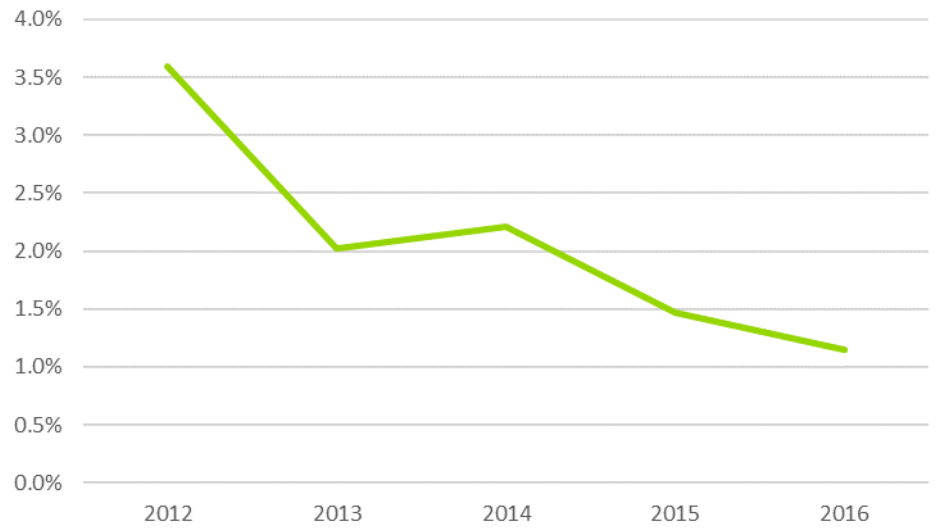
**Figure 2-5 Co-Generation Annual Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

The single simple cycle power station, York Energy Centre, which came on line in 2012 has shown a steady downward trend from 4% in 2012 to 1% in 2016 as demonstrated in Figure 2-6.

**Figure 2-6 Simple Cycle Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

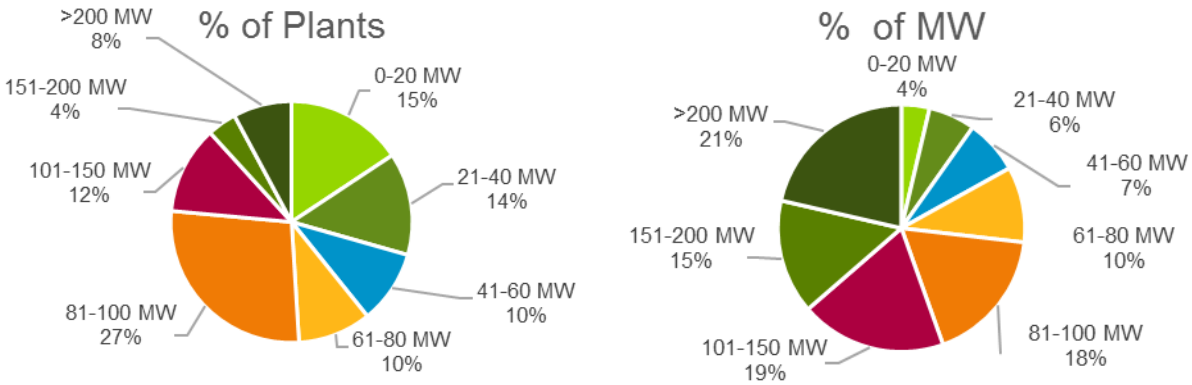
Given the relatively low utilization of the Ontario gas fleet as measured by capacity factor, starts, and hours of operation, Navigant estimates that the plants have a dependable life of 40 years, with a few plants requiring a major rotor replacement, mostly past year 25, over the 40-year life.

### *2.1.4.2 Wind*

The following is a profile of the wind fleet in Ontario as of year-end 2016.

- Number of Plants and MW. There were 656 wind plants in operation in Ontario with a total capacity of 4,751 MW.
- Size Distribution. As shown on the left side of Figure 2-7 below, the most common wind plant size in Ontario is 81-100 MW, with 27% of wind plants, followed by the 21-40 MW segment with 14% of wind plants. On a MW capacity basis, the right side of Figure 2-7 below shows that the >200 MW is the largest segment with 21% of total MW, followed by the 101-150 MW segment with 19% of total MW.

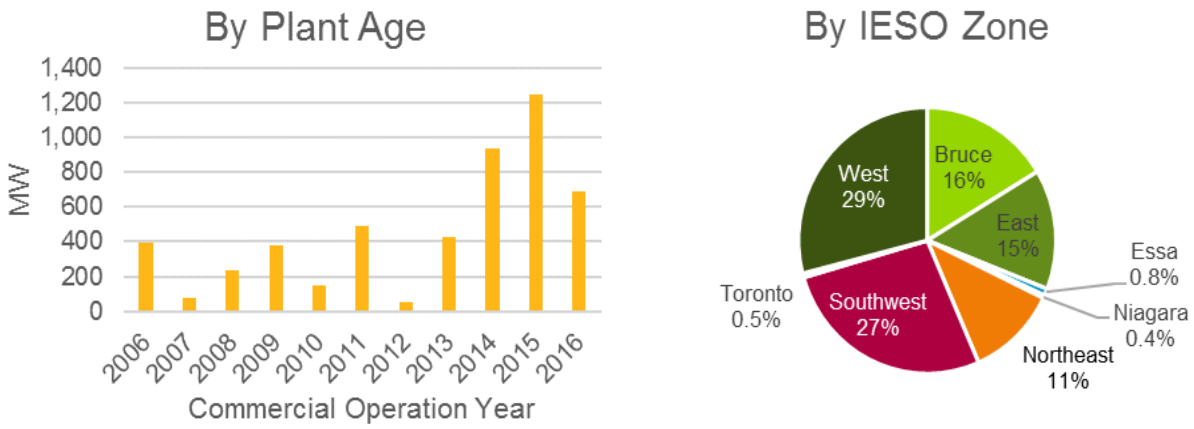
**Figure 2-7 Distribution of Wind Plants**




*Source: Navigant Analysis*

- Age Distribution. As shown on the left side of Figure 2-8 below, 2015 saw the highest amount of new wind capacity, when 1,250 MW of capacity was brought online. Fifteen plants with 557 wind turbine generators were started up in Ontario in 2015.
- Location. As shown on the right side of Figure 2-8 below, the West and Southwest zones (as defined by Ontario's Independent Electricity System Operator) had the most wind power capacity, with 29% and 27% of installations, respectively.

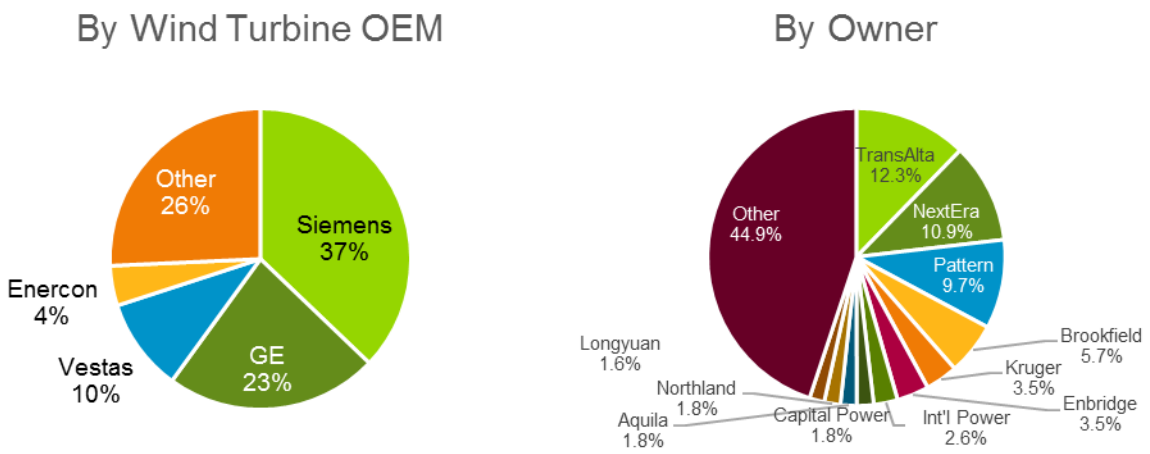
**Figure 2-8 Age and Location of Wind Plants (Ontario)**




*Source: Navigant Analysis*

- Wind Turbine OEM Market Share. As shown on the left side of Figure 2-9 below, the winter turbine generator market in Ontario is relatively concentrated, with 74% of the market controlled by the top 4 suppliers: Siemens (37%), GE (23%), Vestas (10%), and Enercon (4%).
- Wind Plant Owner Market Share. As shown on the right side of Figure 2-9 below, the wind plant ownership market in Ontario is relatively dispersed, with only 53% of the market controlled by the top 10 owners. The leading owners are TransAlta Utilities (12%), NextEra Energy (11%), and Pattern Energy (10%).

**Figure 2-9 Turbine OEMs and Owners of Wind Plants (Ontario)**

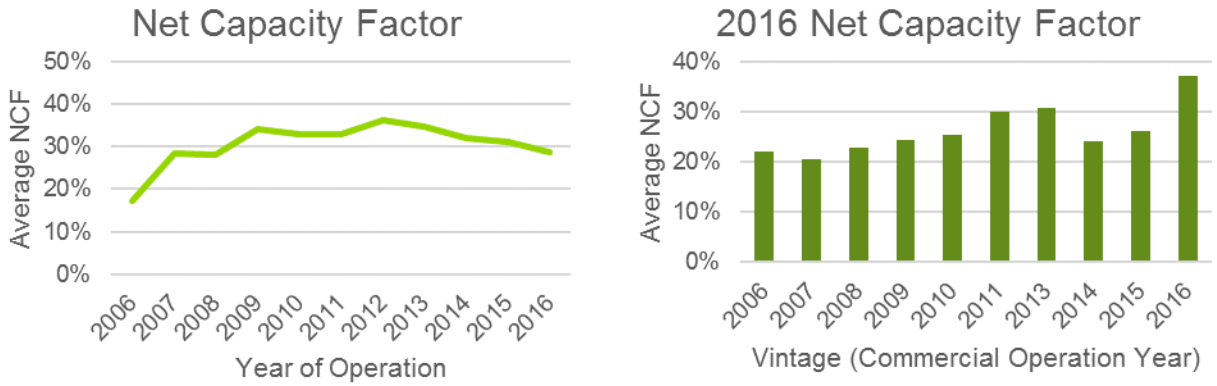



*Source: SNL, ABB Energy Velocity, Navigant Analysis*

- Net Capacity Factor. As shown on the left side of Figure 2-10 below, the average net capacity factor for wind plants in Ontario was 29% in 2016. This value is slightly lower than the 2012 peak of 36% but considerably higher than the 2006 average of 17%. The slight reduciton since 2012 may be due to lower winds, increased curtailment due to transmission constraints, or the impact of a few smaller plants with lower net capacity factors starting up in 2014.

  The right side of Figure 2-10 below shows average 2016 net capacity factors for wind plants in Ontario by vintage (commercial operation year). The trend is generally upwards, meaning that newer wind plants generally have higher net capacity factors compared to their older counterparts. The average 2016 net capacity factors for plants that started up in 2016 was 37%, considerably higher than any other vintage.

**Figure 2-10 Net Capacity Factor of Wind Plants (Ontario)**




*Source: ABB Energy Velocity*

- Plant Condition and Operations and Maintenance Practices. Wind plants in North America typically have winter turbine generator warranties in place for the first two to five years of operation. During the warranty period maintenance is typically performed by the wind turbine generator vendor. When maintenance is performed by an operator other than the original equipment manufacturer, the operator will follow the original equipment manufacturer's maintenance practices as required to maintain the warranty. Most wind plants are therefore usually in excellent condition for the first two to five years of operation regardless of the operator. Two-thirds of the Ontario fleet have been in operation five years or less, so the average Ontario wind plant is generally in very good condition.

Given the age, operating condition, and general maintenance practices at most of Ontario's wind fleet, Navigant estimates that the plants have a dependable life of 25 years.

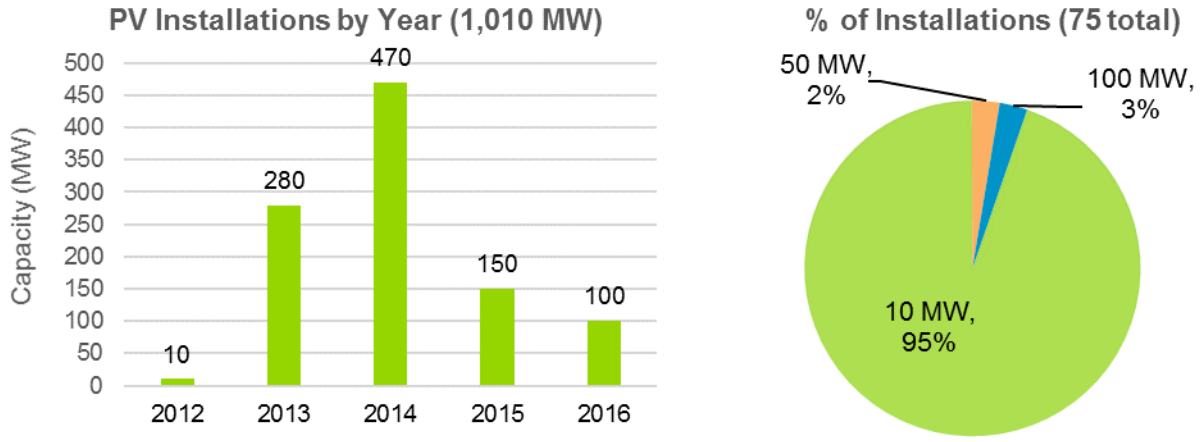
#### *2.1.4.3 Solar*

The following is the profile of Ontario's solar fleet as of year-end 2016 (of systems 10 MW or greater):

- Number of Plants and MW. There were a total of 75 solar ground-mounted systems (10 MW or greater) in operation in Ontario with a total capacity of 1,010 MW.
- Age Distribution. The left side of Figure 2-11 below shows the introduction of solar capacity over time starting in 2012. The year 2014 saw the highest capacity and number of installations. The average age of the fleet is 3.3 years.

- Size Distribution. As shown in the right side of Figure 2-11 below, the most common solar system size in Ontario is 10 MW, which was the cap for projects under the Feed-in Tariff program, except for the Samsung projects which are 100 MWs in size, and some of the Large Renewable Procurement projects.

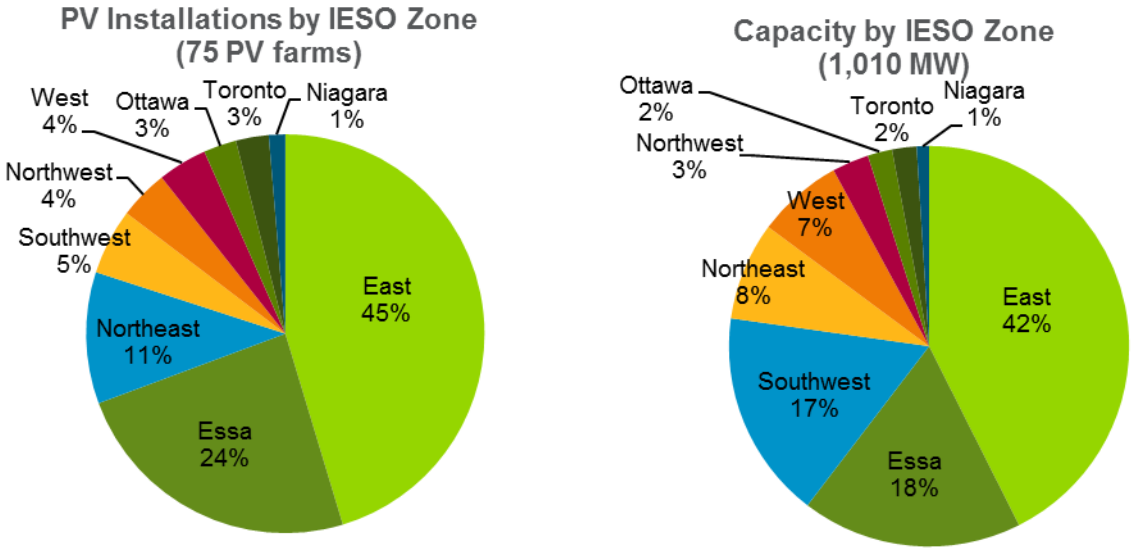
**Figure 2-11 Age and Size Distribution of Ontario Solar Systems 10 MW or greater**




*Source: Navigant Analysis*

- Location. The number of installations are presented on the left side of Figure 2-12 below, and the total capacity on the right distributed across the transmission zones (as defined by Ontario's Independent Electricity System Operator). As shown in Figure 2-12 below, 45% of the operating solar systems in Ontario are in the East zone, which hosts 42% of the installed capacity. This large share is driven by available land, available transmission capacity and proximity to the load centres. Only 5% of operating solar systems are in the Southwest zone, but that represents 17% of the installed capacity due to larger system sizes in that region.

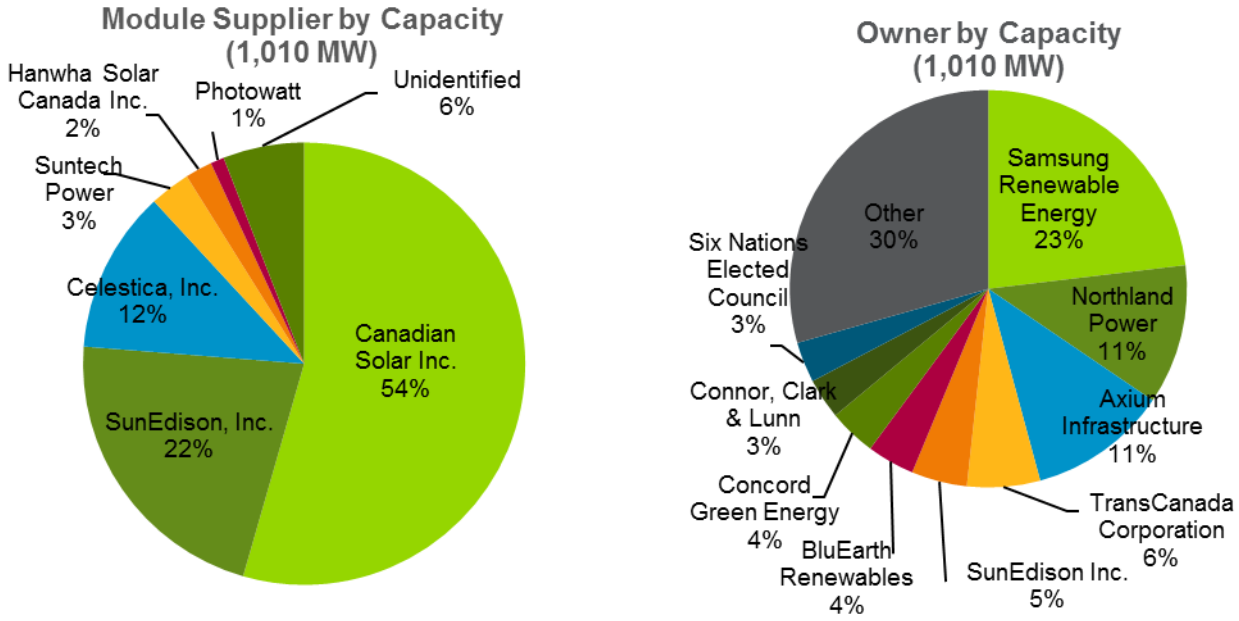
**Figure 2-12 Location of Ontario Solar Systems 10 MW or greater**




*Source: Navigant Analysis*

- Photovoltaic Module Supplier Market Share. As shown on the left side of Figure 2-13 below, the module market in Ontario is relatively concentrated, with 54% of the market controlled by the top supplier, Canadian Solar. 22% percent of the market has SunEdison panels (SunEdison filed for bankruptcy protection in the US in April 2016 and the company's Canadian unit filed for bankruptcy in October 2016). Other suppliers include Celestica (which is shutting down their solar manufacturing division in 2017), Suntech Power, Hanwha, and Photowatt.
- Solar System Owner Market Share. The right side of Figure 2-13 below shows the 10 owners with the highest solar operating capacity in Ontario. Samsung owns the largest portion of the operating fleet at 23%. Northland Power and Axium Infrastructure own the second and third largest in terms of capacity respectively.

**Figure 2-13 PV Module Supplier OEMs and Owners of Ontario Solar Systems 10 MW or greater**




*Source: SNL, ABB Energy Velocity, Navigant Analysis*

- Net Capacity Factor. The average net capacity factor of the operating solar fleet in Ontario according to data from Ontario's Independent Elctricity System Operator is 16.3% (based on MW-AC). The relatively high capacity factor in the past three years is due to a higher overbuild ratio (on the range of 20% to 40%, the latter in more recent years), driven by the drop in panel prices. The capacity factor for new solar installations can be increased via higher DC-AC oversizing or introduction of axis tracker technology.

**Table 2-1 Average Capacity Factor of Ontario's Operating Solar Fleet**

| Year | Capacity Factor (based on MW-AC) |
|---|---|
| 2014 | 15.4% |
| 2015 | 17.4% |
| 2016 | 16.0% |
| **Average** | **16.3%** |

*Source: IESO*

- System Condition. As most operating systems are under five years old, key components have not experienced much degradation, if any at all.
- Operations and Maintenance Practices. Preventative and reactive maintenance for ground-mounted solar systems usually includes panel cleaning, snow removal, lawn mowing and periodic verification of wiring and support integrity. Operations and maintenance costs are only projected to increase with escalation in labour and other material costs. Inverter replacement requires additional costs and is usually offered by the inverter manufacturer. Standard warranties are five to 10 years, with options to purchase extended warranties upfront (e.g., 20-year extended warranty).

Some companies that provide operations and maintenance services for utility-scale solar systems in Ontario include SMA, First Solar, Inc., SunEdison, NextEra Energy Canada ULC, SunPower, Canadian Solar, Inc., Enfinity, Northland Power, Inc., and EDF Renewable Energy, Inc.

Given the age, operating conditions, and standard maintenance practices of most of Ontario's existing solar fleet, Navigant estimates that the solar assets have a dependable life of 25 years.

### *2.1.5 Component Failure Rates and Operating Life*

#### *2.1.5.1 Natural Gas*

The generation performance and failure rate data of natural gas-fired plants is not publicly available and is generally held confidential by plant owners. It is reasonable to assume that performance and failure rates for Ontario plants will be like those of plants in Navigant's Generation Knowledge Services (GKS) database. The GKS database contains a broad and growing user and unit mix and currently has over 2,400 generating units representing over 527 GW of capacity, of which over 135 GW consists of simple cycle combustion turbines and combined cycle combustion turbine units.

The following metrics were used in evaluating the Equivalent Availability Factor (EAF) and Equivalent Forced Outage Rate (EFOR), which are reasonable estimates of the performance of Ontario's gas fleet:

$$EAF = \left( \frac{AH - (EUNDH + ESDH)}{PH} \right) \times 100$$

EAF = Equivalent Availability Factor
AH = Available Hours
EUNDH = Equivalent Unit Derated Hours
ESDH = Equivalent Seasonal Derated Hours
PH = Period Hours

$$EFOR = \left( \frac{FOH + EFDH}{SH + FOH + ERSFDH} \right) \times 100$$

EFOR = Equivalent Forced Outage Rate
FOH = Forced Outage Hours

EFDH = Equivalent Forced Derated Hours
SH = Service Hours
FOH = Forced Outage Hours
ERSFDH = Equivalent Reserve Shutdown Forced Derated Hours

Based on the operating data for the Ontario gas-fired fleet, a peer group was developed that would be representative of the Ontario units, which was combined cycle units that were between 150 and 1,000 MW with a net capacity factor of between 10 to 40%. From that database, the median for units were as listed in Table 2-2 below.

**Table 2-2 NCF, EAF and EFOR for Ontario Wind Fleet**

| | NCF | EAF | EFOR |
|---|---|---|---|
| Median | 26.16% | 83.94% | 4.11% |

*Source: Navigant*

The largest contributor to the EFOR rate was the steam turbine, which caused 11,688 forced outage hours, followed by the combustion turbines with 6,243 hours and the balance of plant (BOP) with 4291 hours. The combustion turbines and BOP contributed to a larger number of events, however (these tended to be of shorter duration than steam turbine events). This is demonstrated in Table 2-3 below.

**Table 2-3 Breakdown of EFOR for Ontario Gas Fleet**

| Component | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| Boiler | 758 | 3% | 74 | 9% |
| Steam Generator | 11,688 | 47% | 142 | 17% |
| Generator | 944 | 4% | 53 | 6% |
| Balance of Plant | 4,291 | 17% | 194 | 23% |
| Combustion Turbine | 6,243 | 25% | 284 | 33% |
| Other | 1,179 | 5% | 110 | 13% |

*Source: Navigant*

The highest number of steam turbine forced outage hours were due to events on the low-pressure turbine at 5,742 hours and the high-pressure turbine at 1,197 hours. This is due to the time required for system cool down and to remove and reinstall casings. The control system had the largest number of events (49) but only contributed to a few forced outage hours (256), as control system issues are normally very fast to resolve. A summary of the causes of forced outages due to the steam turbine is provided in Table 2-4.

**Table 2-4 Breakdown of EFOR for Ontario Steam Turbines**

| Steam Turbine | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| High Pressure Turbine | 1,197 | 14% | 10 | 7% |
| Low Pressure Turbine | 5,742 | 69% | 21 | 15% |
| Valves | 50 | 1% | 24 | 17% |
| Lube Oil | 8 | 0% | 8 | 6% |
| Controls | 256 | 3% | 49 | 35% |
| Miscellaneous (Steam Turbine) | 1,012 | 12% | 29 | 21% |

*Source: Navigant*

The combustion turbine outages were driven by issues with the fuel and combustion system (2,634 hours over 120 events), as demonstrated in Table 2-5 below. This was principally due to dry low NOx combustion system issues and component failures.

**Table 2-5 Breakdown of EFOR for Ontario Combustion Turbines**

| Combustion Turbine Component | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| Inlet Air System and Compressors | 1,907 | 31% | 27 | 11% |
| Fuel, Ignition and Combustion System | 2,634 | 42% | 120 | 49% |
| Turbine | 426 | 7% | 12 | 5% |
| Exhaust System | 65 | 1% | 16 | 7% |
| Auxiliary | 152 | 2% | 1 | 0% |
| Miscellaneous (Gas Turbine) | 1,019 | 16% | 69 | 28% |

*Source: Navigant*

Balance of plant issues contributed to 17% of the total outage hours. The largest number were caused by issues with the electrical system (2,068 hours over 55 events). Issues with the condensate system and feed water systems were also important as shown in Table 2-6 below.

**Table 2-6 Breakdown of Balance of Plant EFOR for Ontario Gas Fleet**

| Balance of Plant | Hours | Percentage | Events | Percentage |
|---|---|---|---|---|
| Condensing System | 418 | 10% | 29 | 15% |
| Circulating Water System | 43 | 1% | 5 | 3% |
| Condensate System | 953 | 22% | 18 | 9% |
| Feedwater System | 554 | 13% | 45 | 23% |
| Electrical | 2,068 | 48% | 55 | 28% |
| Auxiliary System | 171 | 4% | 21 | 11% |
| Miscellaneous (Balance of Plant) | 84 | 2% | 21 | 11% |

*Source: Navigant*

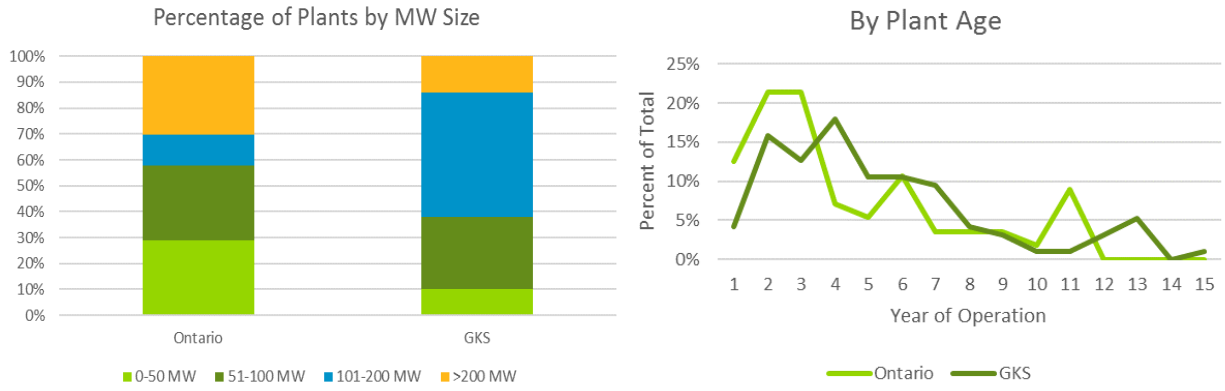
The heat recovery boilers and generators only accounted for a total of 7% of all outage hours with the generator accounting for 944 outage hours and the boiler accounted for 758 hours. The largest driver on the heat recovery boiler was tube leaks, while the generator was driven by a combination of cooling system and exciter issues.

While component failure rates increase with the age and use of natural gas plants, and heat rate degradation will tend to make the plants less completive in energy markets over time, plants following the proper maintenance and replacement regimes as outlined in section 2.1.1 should be able to continue operating over their forty-year expected life with acceptable outage rates.

#### *2.1.5.2 Wind*

Wind plant performance and failure rate data is not publicly available and is generally held confidential by plant owners. However, it is reasonable to assume that Ontario wind plants will have performance and failure rates similar to those of wind plants in Navigant's Generation Knowledge Service (GKS) wind database (Ontario has a slightly newer fleet, and fewer mid-size plants than the GKS averages, but they are similar overall). The GKS wind database includes data from approximately 8 GW of capacity from a variety of turbine models, plant sizes, ages, and operations and maintenance contract types. The vast majority, 95%, of the MW capacity in Navigant's GKS database is in North America. Figure 2-14 shows the database distribution by plant size and age, which is similar to the size and age distribution of Ontario's wind fleet.

**Figure 2-14 Plant Size and Age Distribution in GKS Wind Database**




*Source: Navigant GKS Wind Database*

The following are median values of selected performance metrics in the GKS wind database, which are reasonable estimates of performance of the Ontario wind fleet:

- Availability. The most common measure of availability used in the wind industry is equipment equivalent availability factor (EEAF). EEAF does not penalize the plant for hours when there is no wind. Median EEAF = 95.6%.

$$EEAF = \frac{[PDTH - (FTH + MTH + PTH)]}{PDTH} \times 100$$

  - PDTH = Period Turbine-Hours = (total hours in the period) *(number of turbines)
  - FTH = Forced Turbine-Hours = (forced outage hours per turbine) *(number of turbines)
  - MTH = Maintenance Turbine-Hours = (maintenance outage hours per turbine) *(number of turbines)
  - PTH = Planned Turbine-Hours = (planned outage hours per turbine) *(number of turbines)

- Forced Outage Rate. The most common measure of forced outage rate used in the wind industry is equipment equivalent forced outage rate (EEFOR). Median EEFOR = 2.7%.

$$EEFOR = \frac{FTH}{(CTH + FTH + RUTH)} \times 100$$

  - CTH = Contact Turbine-Hours
  - RUTH = Resource Unavailable Turbine-Hours

- Major Failures. Navigant defines major failures as events which either (a) require a crane to repair or replace a system or (b) require the replacement of a major component within a system, resulting in a cost greater than 5% of the installed cost of the turbine. Table 2-7 below is a summary of average major failure rates in the GKS wind database, both for the most recent benchmark year (2015) and the cumulative rate for the life of the plant. Also, shown in the far-

right column of Table 2-7 below are industry average failure rates as reported in a 2013 United States National Renewable Energy Laboratory (NREL) study.[1]

- 2015 Major Failure Rate = (# of Major Failures in 2015) / (# units)
- Cumulative Major Failure Rate = (# of Major Failures through 2015) / (# units) / (years since COD)

**Table 2-7 Major Failure Rates by System**

| System | 2015 Major Failure Rate | Cumulative Major Failure Rate | Industry Average Failure Rate |
|---|---|---|---|
| Blade | 0.2% | 0.5% | 0.67% |
| Gearbox | 1.1% | 1.3% | 5.0% |
| Generator | 2.1% | 2.1% | 3.5% |
| Main Bearing | 0.6% | 0.5% | 2.0% |
| Generator Bearing | 0.3% | 0.4% | n/a |
| Transformer | 0.1% | 0.04% | n/a |

*Source: Navigant GKS Wind Database, NREL*

While component failure rates do increase with age, the plants continue to maintain acceptable operating profiles over the course of their identified useful life (albeit with capacity factor degradation and operations and maintenance cost escalation). Beyond the identified useful life, the plants would see accelerated component failures which eventually make continued operation untenable (see section 3.1.1.2).

#### *2.1.5.3 Solar*

The operating life of solar systems is usually monitored by the system owner. In the solar industry, the rate at which the system is fully functioning (and available to generate power) expressed as a function of the total time considered, is referred to as the availability rate. For solar, the availability rate is relatively high, approximately 98% to 99%[2], compared to other technologies. This is because components are connected in strings, meaning that should something fail, only a single string or portion of the system will experience an outage, while the rest of the system continues to generate power. It is unlikely for all to fail at once.

- Panels most often experience an outage or failure due to coverage (snow, soiling, or other shading) or a wiring fault. However, the way panels are connected electrically, when one stops generating power, the others continue.
- Inverters for utility-scale systems are usually 1 MW. For a 10 MW system, the typical design is ten (10) 1 MW inverters. This means that if an inverter fails, only one-tenth of the system would power down. Inverters typically last 10-12 years, but it is possible that an outage can occur sooner than that.
- Racking systems are typically tested and rated to handle expected snow and wind loads plus a factor of safety. Therefore, the warranty from the manufacturer covers damage from these occurrences. Should the structural integrity of the racking system be compromised, it is again

[1] NREL, Lantz, E., Operations Expenditures: Historical Trends and Continuing Challenges, 2013

[2] DBRS reported that the independent engineer for the 100 MW (AC) Kingston Solar project assumed inverter availability of 99%.

likely that only the module(s) related to one string would need to be taken offline to repair, not the whole solar system.
- Wiring is required to be protected up to codes and standards to limit the potential for damages.

Overall, it is unlikely that the component failure rates would cause an unacceptable operating profile for the solar fleet over a 25-year operating lifespan.

## 2.2 Leasing, Regulatory, and Contract Issues

### *2.2.1 Leasing Structure*

When constructing a natural gas-fired power station it is typical for the owner to purchase the land that is used for the site. All the natural gas-fired plant owners that Navigant could interview owned the site land; therefore, no leasing issues were identified that would adversely impact the expected useful life of 40 years.

The terms of land leases for wind plants vary. The minimum length is 20 years, but up to 50 year leases are not unusual. In most cases, there will be an option for the plant owners to extend the lease for an additional 15 years or more. Leases are contracts between the plant owners and landowners, and they are generally written to be more favourable to the plant owners. For example, plant owners can typically construct, erect, use, install, reinstall, replace, relocate, maintain, and remove equipment from time to time, without limitation. No approvals to modify or extend leases are needed by local jurisdictions, community, or aboriginal partners, unless they have such approval rights due to having partial ownership in the wind plant. Navigant did not identify any leasing issues that would adversely impact the expected useful life of 25 years for wind assets or any further investments to extend asset life beyond 25 years.

Most solar farms larger than 10 MW are sited on farmland and have a minimum 20-year lease. Some may go as high as 50 years and/or there might be options to extend the lease. Counterparties include private landowners, First Nations, and municipalities. Leases usually have two cost components as follows: (1) a fixed component and (2) a variable component where the variable component is equal to a percentage of revenue generated from the asset (e.g., 3%). No leases require third party approvals such as local jurisdictions, community, or aboriginal partners, unless those parties are partial owners in the project. Navigant did not identify any leasing issues that would adversely impact the expected useful life of 25 years for solar assets or any further investments to extend life beyond 25 years.

### *2.2.2 Regulatory Issues*

No regulatory issues were identified that would adversely impact the expected useful life of natural gas, wind and solar plants of 40 years, 25 years and 25 years respectively.

For partial repowering of wind plants (replacing the drive train and rotor with similar size components), regulatory approvals would generally not be required. The noise profile of the new turbine will generally be less (quieter) than the original turbine and therefore would not need to be remodelled. The rotor diameter will typically be the same as the original in a partial repowering, so a revised permit for increased tip height generally will not be needed. One wind plant owner reported having a permit from the municipality that includes a road allowance for the distribution lines. The city can impose reasonable conditions but cannot generally deny an extension of the permit.

Regulatory approvals would likely be required for full repowering of wind plants (replacing the turbines with larger components). Existing building and operating permits would generally not cover the significant construction work and changes in plant configuration that is associated with full repowering. However, repowering could offer the possibility for expedited permitting because development is occurring at a previously permitted site and these sites have a much longer record of accomplishment of historical environmental data. Existing plants also tend to have increased local familiarity, which might also facilitate the permitting process. On the other hand, if endangered species are found to be in the proximity or other environmental damage has occurred, permitting would likely be more complex and drawn out, or local siting requirements may become more stringent over time.

While some regulatory approvals are required to repower wind assets to extend their life beyond 25 years, Navigant does not believe that they pose insurmountable risks to such investments. Navigant did not identify any regulatory issues that would adversely impact repowering for natural gas and solar plants to extend their useful life beyond 40 years and 25 years respectively.

# 3. COST OF LIFETIME EXTENSION AND REPOWERING

This section outlines the costs of lifetime extension that would be borne by ratepayers. After considering the various options available, Navigant determined that a full repowering of the wind and solar fleet after 25 years of operation, and partial repowering as needed for the natural gas fleet as the most cost-effective repowering options.

## 3.1 Repowering and Extension Options

### *3.1.1 Life Cycle of Plants under Normal Operations and Maintenance*

#### *3.1.1.1 Natural Gas*

As discussed previously, a combustion turbine power plant can operate for at least 40 years if the owner follows prudent operating practices and recommended outage schedules for the combustion turbine, generator, steam turbine and heat recovery boiler. In general, the operations and maintenance for natural gas-fired plants will increase with the escalation terms within the service contracts for the associated equipment.

Combustion turbine outages are driven by the hot section and combustion components. Manufactures have improved this technology so outages are now not required until either 24,000 factored fired hours or 900 factored starts are reached. When the hot section components are removed, they can be repaired from two to four times depending on the component and the manufacture's recommendations.

Electrical generators and steam turbines are generally linked to scheduled inspection intervals of six years or 48,000 operating hours. Following best practices, owners and operators have managed to extend those intervals to between 10-12 years or 80,000 to 96,000 operating hours.

Heat recovery steam generators with proper maintenance have operated for 15-20 years without major capex being spent. Replacement parts are most commonly needed in the heat-affected zones of the super-heaters or the high flow areas of the economizers.

Maintenance spending increases with the number of starts of a combined cycle power plant. As discussed earlier, units are now designed for 150-250 starts per year. This spending is normally associated with balance of plant equipment and does not materially impact the overall cost of operations.

Depending on the operating profile of the facility, reliable operations after 20 years would most likely require capital expenditures for the heat recovery steam generators, electrical generators, steam turbines and combustion turbines. If no investments are made it would be expected that the units would suffer from forced outages and decreased availability.

Section 3.1.2.1 discusses the repowering costs associated with natural gas plants and evaluates them against their benefits to determine the most cost effective option at the end of life.

#### *3.1.1.2 Wind*

As previously discussed, the physical lifetime of a wind plant is generally considered to be 25 years. Historically an assumption of 20 years was used in analyses to match the financial life, but an increasing

number of plant owners are using 25 years due to technological advancements that have led to improvements in plant reliability and longevity.

If a wind plant were to continue to be operated beyond the physical lifetime without significant investment, operations and maintenance costs would increase at an accelerated rate and availability would drop at an accelerated rate as wind plants generally have a capacity factor degradation of about 1.6% per year making this option less attractive financially. Ultimately the plant owners will conclude that operating the plant as is has less value than other options such as full repowering, partial repowering, and decommissioning, which are discussed further in Section 3.1.2.2.

#### *3.1.1.3 Solar*

As previously discussed, the physical lifetime of a ground-mounted solar photovoltaic system is 25 years. The modules and racking typically come with 10-year product warranty (defects in materials and workmanship) and a 25-year performance warranty. Inverters typically have a 10-year product warranty and last 10-12 years. Wiring typically lasts 10-12 years. Therefore, inverters and wiring would need to be replaced at least once on average over a 25-year lifetime.

If a solar system was to continue to be operated beyond the physical lifetime without significant investment, operations and maintenance costs would remain the same, only increasing with inflation and the price of any material costs involved in maintenance. Replacement of inverters and wiring are separate from general operations and maintenance and would require minimal investment. Inverters do typically fail after year 10 so most installers opt into an extended warranty where available, which is an upfront cost at the time of installation. With the standard warranty the cost of the inverter would just be incurred later, at the time of the replacement.

Photovoltaic modules, and therefore, systems, are projected to degrade by 0.5% each year, which is usually how the capacity factor and system performance is forecasted at the time of installation. The capacity factor of the system can be determined based on the number of years since the components were replaced. If a solar system operated beyond the useful life of 25 years, the capacity factor of year 26 would be that much lower than if a whole new system were installed in its place. Section 0 discusses evaluates the costs and benefits associated with options available at the end of life such as full repowering, partial repowering, and decommissioning.

### *3.1.2 Cost of Repowering for Lifetime Extension*

#### *3.1.2.1 Natural Gas*

As discussed above the limiting factor on the combustion turbine would be the turbine rotor that requires a major inspection and potential replacement of turbine wheel at 200,000 factored hours or 5,000 factored starts. The rotor must be removed and sent to a qualified repair shop for disassembly, inspection and repair and/or replacement of the rotor disks. In addition, there would likely be requirements for replacement of super-heater or economizer sections of the heat recovery steam generators.

The costs for the turbine life extension would be in the range of CAD$16M for the inspection and repair/replacement of hot section components. The other work required on the heat recovery steam generators would be in the range of CAD$4M.

The balance of plant equipment would normally be covered during the routine maintenance at the facility. This would include the rebuilding or replacement of pumps, including the boiler feed pumps, and the repair and replacement of motors. It would also include the replacement of any catalysts that are required for emissions control. Steam turbines and electrical generators should be able to operate for the life of the plant with routine inspections and maintenance, assuming there are no incidents with the equipment.

The total repowering costs of a natural gas plant is approximately $20M which is a fraction of the cost of shuttering the plant and building a new one to replace the capacity. According the U.S. Energy Information Administration,[3] the cost of a new natural gas combustion turbine is $1,100/kW meaning that a 100 MW plant would cost $110M. Hence, a partial repowering as needed for gas plants is the most cost efficient option when the asset reaches end of life.

#### *3.1.2.2 Wind*

Wind plant owners generally have three options when a plant reaches the end of its useful life.

- *Full repowering*, which is defined as the complete dismantling and replacement of turbine equipment, including the tower and foundation. With full repowering, some of the existing project infrastructure (e.g., roads, buildings, and interconnection equipment) is assumed to be utilized in the new project. There is also the potential to offset repowering costs by recycling or selling the older equipment.
- *Partial repowering*, which is defined as installing a new similar sized drivetrain and rotor on an existing tower. Some peripheral components, such as the power convertors and electronics, may also be replaced. Partial repowering allows existing wind power projects to be updated with equipment that increases energy production, reduces machine loads, increases grid service capabilities, and improves project reliability.
- *Decommissioning*, when the plant is fully disassembled and the land is returned to its original use. The equipment is sold for reuse or scrapped.

Repowering (either full or partial) is a major undertaking that requires substantial capital investment and planning, similar to the development of the original facility. The major benefits of repowering are increased plant availability, the return of operations and maintenance costs to normal levels, and an extended plant lifetime. Performance improvements associated with partial repowering are assumed to be less than under full repowering but greater than the original design of the machine.

Navigant's costs of repowering were developed from a case study of a wind plant with the following characteristics of an average wind plant in the current Ontario fleet:

- 40 Siemens 2.3 MW WTGs, with a total plant capacity of 92 MW;
- Commercial Operation Date and Year 1 of operations in 2015;

Three scenarios were considered:

- decommissioning the plant after 25 years of operation in 2040;
- full repowering after 25 years in 2040, followed by decommissioning after an additional 25 years in 2065.

[3] Capital Cost Estimates for Utility Scale Electricity Generating Plants, Released November 2016 – Table 1. Updated estimates of power plant capital and operating costs https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capcost_assumption.pdf

- partial repowering after 25 years in 2040, followed by decommissioning after an additional 25 years in 2065.

Table 3-1 summarizes the key assumptions of the case study. Capital and operations and maintenance cost assumptions are from a 2013 NREL repowering study,[4] escalated to 2017 USD at 2.5% per year and converted to CAD at a rate of 1.35 CAD = 1 USD. All operations and maintenance costs were converted to fixed operations and maintenance for modelling purposes. Fully repowered plants are assumed to have slightly lower (5%) total installed capital costs because of the ability to reuse or repurpose existing equipment. Partial repowering is estimated to result in an approximately 15% lower capital cost because of reusing existing equipment including towers and foundations. In all scenarios, it is assumed that decommissioning cost (occurring in year 26) equals the resale or scrap value of the components (i.e., net zero cost).

Net capacity factor assumptions are based on projections from NREL's 2016 Annual Technology Baseline report, but are benchmarked to average Ontario fleet values from Ontario's Independent Electricity System Operator. Larger rotors and taller towers, along with other technological advancements, have resulted in significant increases in net capacity factors for utility-scale wind plants over the past 15 years. These advancements are expected to continue for the foreseeable future, albeit at a slower pace. Net capacity factors for this case study is assumed to be 37% for full repowering in 2040, which is a 5% improvement over the initial 32% net capacity factor in 2015, reflecting the technological advancements that are expected during this 25-year period. As defined here, partial repowering was estimated to achieve about 50% of the energy production improvements associated with full repowering.

As can be seen from Table 3-1 below, the fixed and variable operations and maintenance costs are the same in all cases. The capital costs for full repowering are slightly lower than the original plant cost and only 12% higher compared to partial repowering but deliver double the energy production improvements compared to partial repowering, as stated in the study. Hence, a full repowering at the end of the original asset life of 25 years is the most cost effective alternative.

**Table 3-1 Wind Repowering Case Study Key Assumptions and Results**

| | units | Original Plant | Full Repowering | Partial Repowering |
|---|---|---|---|---|
| Year 1 | - | 2015 | 2040 | 2040 |
| Capital cost | 2017 CAD/kW | 2,844 | 2,291 | 2,049 |
| Fixed O&M in year 1 | 2017 CAD/kW-year | 19.04 | 19.04 | 19.04 |
| Variable O&M in year 1 | 2017 CAD/MWh | 9.32 | 9.32 | 9.32 |
| O&M increase per year | %/year | 2.0% | 2.0% | 2.0% |
| NCF in year 1 | % | 32% | 37% | 34.5% |
| NCF decrease per year | %/year | 1.6% | 1.6% | 1.6% |

*Source: Navigant, NREL Wind Project Repowering*

[4] NREL, Wind Power Project Repowering: Financial Feasibility, Decision Drivers, and Supply Chain Effects, December 2013, http://www.nrel.gov/docs/fy14osti/60535.pdf

#### *3.1.2.3 Solar*

Similar to wind assets, three scenarios were considered:

- decommissioning the plant after 25 years of operation,
- full repowering after 25 years, followed by decommissioning after an additional 25 years.
- partial repowering after 25 years, followed by decommissioning after an additional 25 years in 2065.

Table 3-2 summarizes the key assumptions related to life extension of solar plants.

**Table 3-2 Solar Repowering Case Study Key Assumptions and Results**

| | units | Original Plant | Full Repowering | Partial Repowering |
|---|---|---|---|---|
| Year 1 | - | 2017 | 2042 | |
| Capital cost | $/W-DC | $1.80 | $0.95 | |
| PV Module Cost | $/W-DC | $0.54 | $0.24 | |
| Fixed O&M | $/kW-DC | $27 | $27 | $27 |
| O&M increase per year (Inflation) | %/year | 2% | 2% | 2% |
| Capacity Factor (based on MW-AC) | % | 16.3% | 16.3% | 16.3% |
| Capacity Factor decrease per year | %/year | 0.5% | 0.5% | 0.5% |

*Source: Navigant*

As mentioned in Section 3.1.1.3, to extend the life cycle of a ground-mounted solar photovoltaic system the major pieces of equipment that would need to be replaced are the inverters and the wiring. These two components have a technical lifetime of 10-12 years and so they are replaced at least once in a 25-year lifetime. The expected operating life after replacement of the inverters and wiring would be another 10-12 years.

Attention should also be paid to the lifetime and replacement cost of the solar photovoltaic modules. Panel technology is improving at a much faster rate than other renewable technologies, such as wind, and other key solar components such as racking and inverters. In parallel, module prices have significantly dropped over the past 10 years and are projected to continue to decrease for the next 10 years. If modules are replaced 25 years from now, they may have a much higher efficiency and much lower costs than what exists today. Replacing panels would extend the life of the system an additional 25 years, or perhaps longer based on the technical lifetime of panels at the time. The capacity factor in Table 3-2 is consistent across the full and partial repowering alternatives. While panel efficiency will continue to increase over time, it will not impact capacity factor (it does impact power density). Capacity factor is increased by using tracker technology, but for this analysis, we assume a constant split between fixed tilt and tracker in both 2017 and 2038. By contrast, wind farms have could increase capacity factor by increasing the hub heights to reach better wind regimes.

Due to technological improvements, the capital cost for a full repowering is about half that of the original plant and could potentially have a useful life that is greater than 25 years making it the most cost effective option.

## 3.2 Leasing, Regulatory, and Other Costs

The owners of natural gas-fired facilities would have to renegotiate new contracts for repair and replacement of combustion turbine parts. This may result in cost savings as there have been third party entrants into the parts supply and repair markets.

Leasing, regulatory, and other development costs are low relative to the total capital expenditures associated with modern wind facilities. These costs are generally assumed to be the same as those required for a greenfield development wind project.

Since the technical lifespan of solar photovoltaic systems, specifically the modules, is expected to exceed a 20-year power purchase agreement, some owners expect the system to run for an additional 5-10 years beyond the PPA and original lease. However, plans to extend the land lease are typically not put in place until closer to the end of the power purchase agreement term, as refinancing the lease early could result in penalties.

At the time of the installation of a solar system, there is usually a budget set aside for decommissioning. If the system were to be decommissioned later than originally intended, there would be no extra costs, and the original budget should cover decommission at year 25 or 30.

In summary, no significant costs for leasing, regulatory or other developmental costs were identified that would adversely impact repowering decisions.

# 4. REFERENCES

1. NREL, Wind Power Project Repowering: Financial Feasibility, Decision Drivers, and Supply Chain Effects, December 2013, http://www.nrel.gov/docs/fy14osti/60535.pdf
2. NREL 2016 Annual Technology Baseline, November 2016
3. SNL
4. http://www.powermag.com/wind-turbine-repowering-horizon/
5. http://www.aweablog.org/repowering-gives-new-life-to-old-wind-sites/
6. NREL, Lantz, E., Operations Expenditures: Historical Trends and Continuing Challenges, 2013
7. NREL, Tegen, S.; Hand, M.; Maples, B.; Lantz, E.; Schwabe, P.; Smith, A. (April 2012). 2010 Cost of Wind Energy Review.

## Veinot, Cindy (TBS)

**From:** Veinot, Cindy (TBS)
**Sent:** February 1, 2017 7:02 PM
**To:** Hume, Steen (ENERGY); 'Picard, Michel'; 'Ouellette, Lois A'; Petsche, Nadine (TBS)
**Cc:** Hosick, Sarah (TBS)
**Subject:** Meeting tomorrow

Hi all,

A while back we dropped the idea of having the LDCs take on the responsibility of a long-term payable due to the Province because the amount collected from the LDCs will be dependent on future rates and future energy consumption.

I've been asked to think about whether this option would work if we chose a percentage of the amount to be due from the LDCs that is reflective of the "minimum known amount".

Example:

GA = 100
Amount to be deferred from the ratepayers bills = 30

Could a structure be set up so the LDCs agree to a longterm payable of a percentage of the 30 – 50% would be 15, 75% would be 22.5, etc. We would have to understand the potential for volatility in price and consumption.

This structure would be in place of a new separate stand-alone entity.

The expected fiscal impact to the Province would be the amount not billed to the LDCs – for example, if 75% were billed to the LDCs (or 22.5), then 7.5 would be the fiscal impact to the Province (assuming we could not support this amount as an asset.)

Could you give this some thought before we meet tomorrow.

Thanks all,

Cindy

Cindy Veinot
Provincial Controller and Assistant Deputy Minister, Office of the Provincial Controller
Treasury Board Secretariat
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario M7A 1Y7

T: 416-325-8017
E: cindy.veinot@ontario.ca

TBS

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

July 20, 2017

Ms. Bonnie Lysyk
Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, ON M5G 2C2

Dear Ms. Lysyk:

Thank you for the information that you presented at our Board of Directors meeting in Toronto on June 14, 2017 and your subsequent letter dated June 22, 2017 which outlines your technical position regarding rate regulated accounting and the inclusion of the market accounts on the IESO financial statements. Based on your position, you requested that the Board consider amending and reissuing its 2016 financial statements.

I can assure you on behalf of the Board that all of your comments were taken very seriously and that the points you raised were given very careful attention and reflection.

It is not the intention of the Board at this time to specifically address the technical position you have conveyed in your letter. A response to the technical position will be provided by the IESO, with support from its consultants and the KPMG audit partner, in the near future.

The Board has thoroughly reviewed the process it followed in making its decision to approve the accounting policy changes for the year ended December 31, 2016. The Board is of the opinion that it has exercised appropriate due diligence in approving the accounting policy changes as they relate to the 2016 financial statements, and to the use of regulatory accounting for the unrecovered smart metering expenses and the unrecovered PSAB transition items, as well as to the inclusion of the market accounts.

The changes made for 2016 provide increased transparency and information with regards to both material expenditures for which recovery over time has been approved and to the IESO's administration and settlement of electricity market transactions worth in excess of $17 billion annually.

Given the above, it is the Board's decision to not amend and reissue the IESO's December 31, 2016 financial statements.

Please note, however, that the Board will continue to be diligent in its monitoring of the Ontario Fair Hydro Plan transactions, its accounting treatment and the potential impact on the IESO's 2017 financial statements.

In closing, I would again like to thank you for taking the time to meet with the IESO Board of Directors last month.

Yours truly,

Tim O'Neill
Chair, Board of Directors
Independent Electricity System Operator

c: Peter Gregg, President & CEO-IESO

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

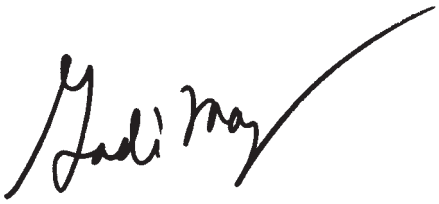
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

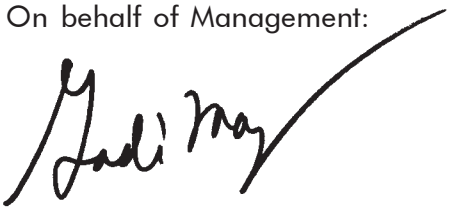
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

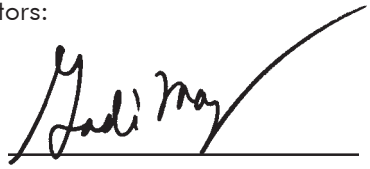
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

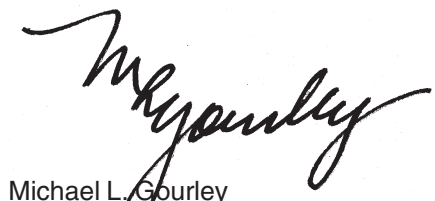
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

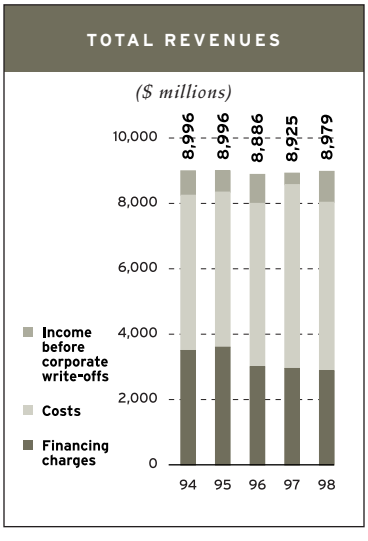
CHAIRMAN

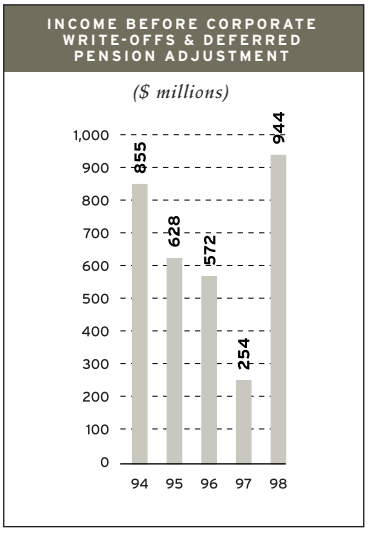
## CONTENTS

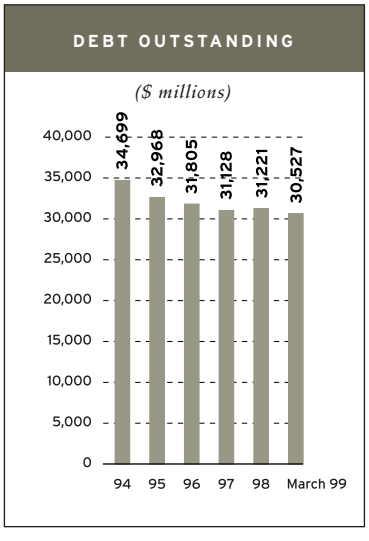

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

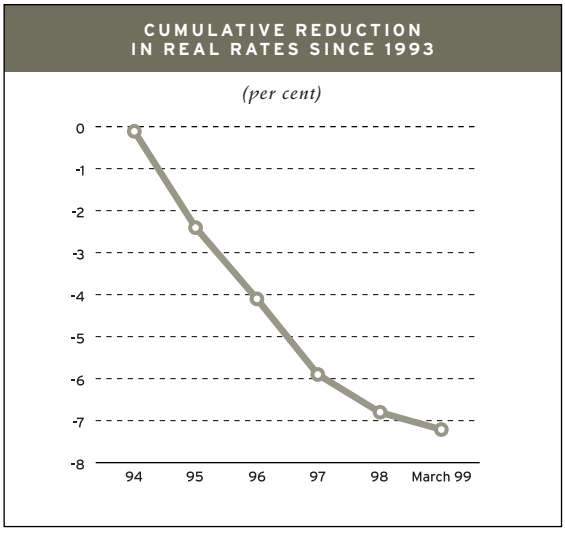
# Ending on a High Note

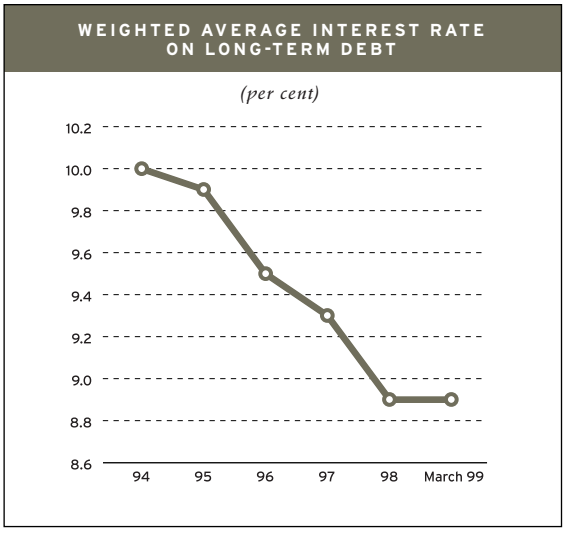
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

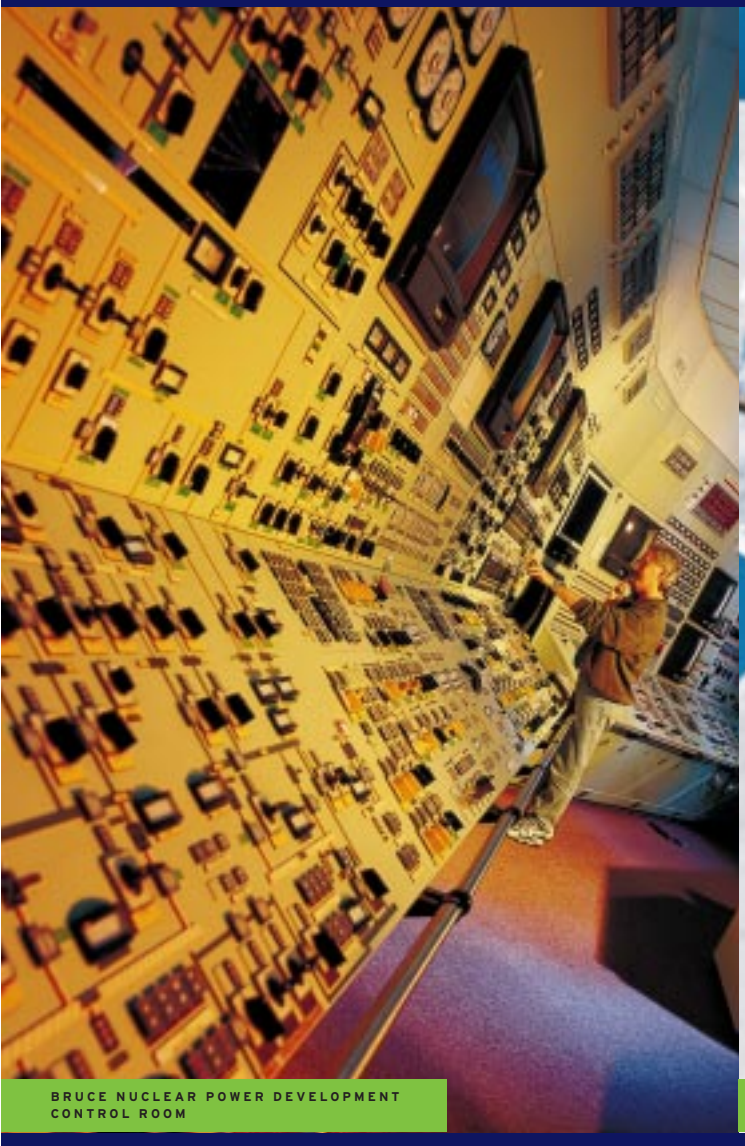
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

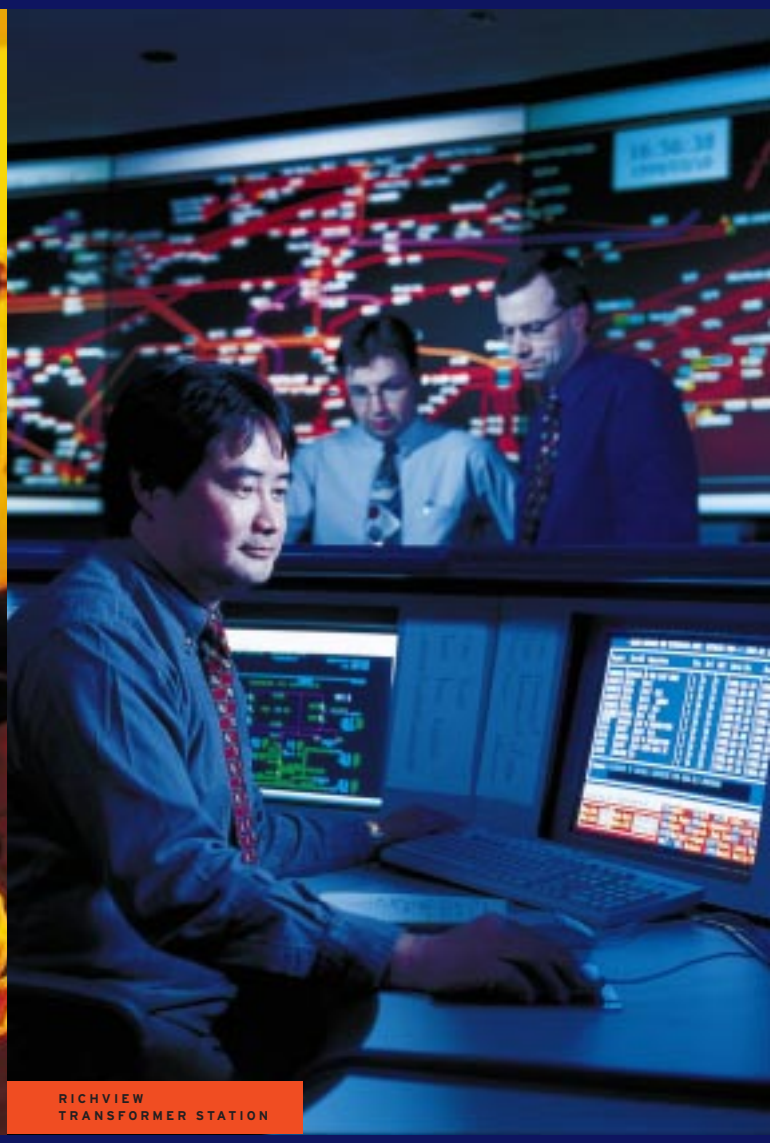
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

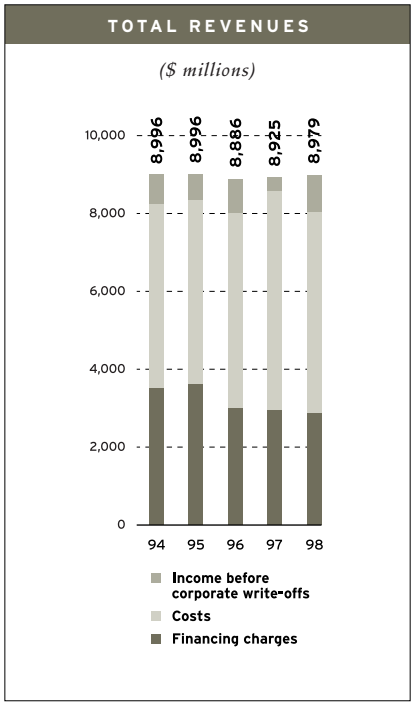
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

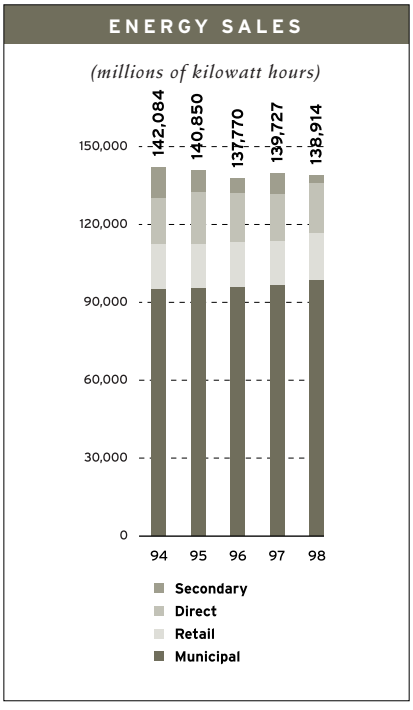
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



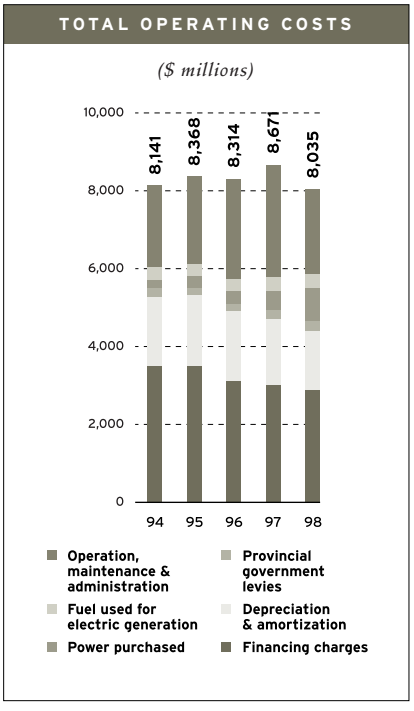

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

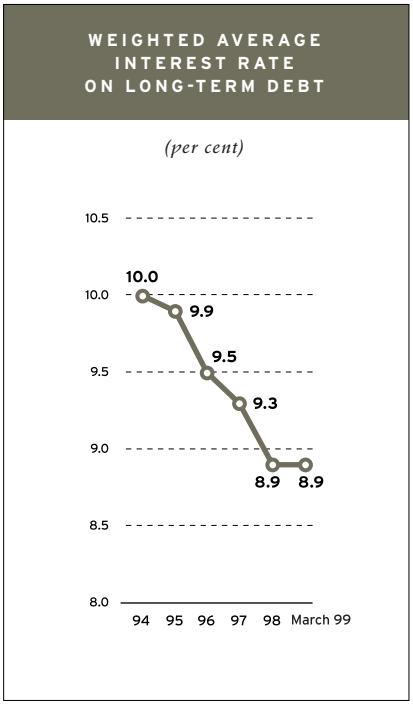
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

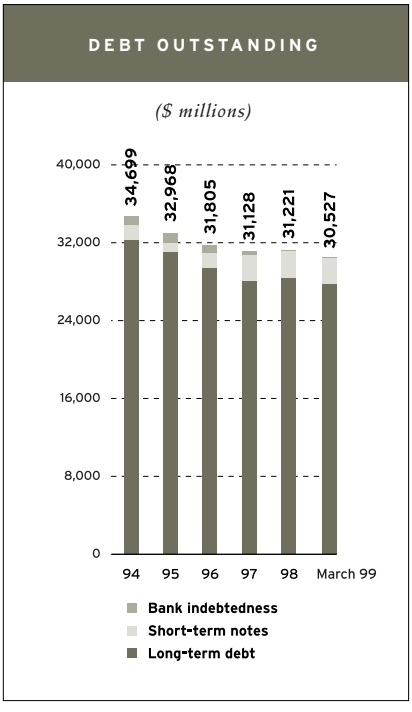
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

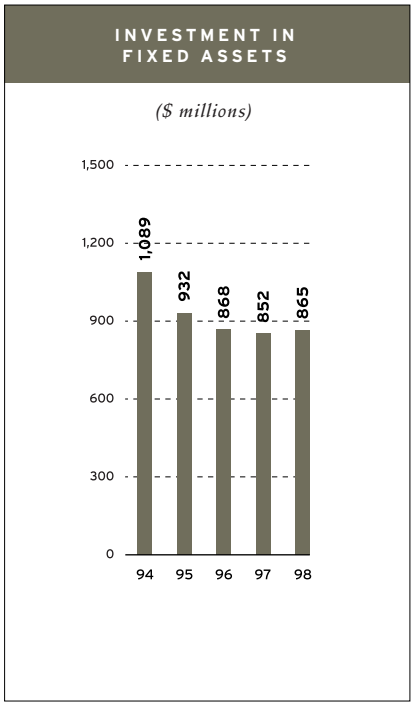
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Gadi Mayman; Ken Kandeepan; Mike Manning |
| **Subject:** | FW: Final Package for OAG |
| **Date:** | Wednesday, October 04, 2017 2:33:42 PM |
| **Attachments:** | Government Response to AG FHP Report - FINAL.pdf<br>AG FHP Report - Consolidated Comments - FINAL.pdf<br>Joint DM Memo to OAG - Oct 4 2017.pdf<br>Supporting Evidence per Consolidated Comments.zip |

---

Final documents – which includes Ron's edit to the consolidated comment tracker re: regulatory practice.

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 2:30 PM
**To:** Martin Schlaepfer (MOF) ; Anna Strathy ; Kyle MacIntyre (MOF) ; Patrick Laughton (MOF) ; William Bromm (CAB)
**Subject:** RE: Final Package for OAG

Updated final package. The memo now copies the SoC and ministers, and includes the 'welcoming' language that was discussed yesterday about ministers meeting the AG.
Other two docs include minor grammatical edits from the OFA (thanks Anna!).
Will be sending this to the OAG momentarily.

---

**From:** McLean, David (MOF)
**Sent:** October 4, 2017 1:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); MacIntyre, Kyle (TBS); Laughton, Patrick (TBS); Bromm, William (CAB)
**Subject:** Final Package for OAG
**Importance:** High

Hi All,
I've attached the final materials for the AG.

Please let me know ASAP if you have any concerns. Aiming to send very soon.

Thanks for all the great team work!
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

## GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN

The government of Ontario does not agree with the assertions and conclusions expressed in the report by the Office of the Auditor General (OAG) on *Ontario's Fair Hydro Plan (OFHP).*

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the report's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

The Global Adjustment (GA) pays for the bulk of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the report's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations <u>do not</u> create accounting rules or legislate the accounting. This is a

fundamental disagreement with the report. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

The OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting social programs to the tax base, and some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The report appears to suggest that all costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the report. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report does not reflect the technical substance of the OFHP, some of which has yet to be implemented.

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | N |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y – please refer to enclosed document titled "20171003 1928" |

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so* ***IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns and 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing estimates over the thirty year life of the program have been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers' electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure due diligence was completed." | N |

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Y – please refer to enclosed file titled "Email Evidence re LDC Option" |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y – please refer to enclosed reports |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | Y<br>Please refer to enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer is a normal rate-setting regulatory practice. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred). | Annual Report |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths) that may be shorter than the expected useful life of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>Finally, the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | N |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | N |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y - See hyperlink |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y – please refer to enclosed document titled "Letter to AG from IESO Board July 20, 2017" |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y – see hyperlinks |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | https://www.ontario.ca/laws/statute/98e15<br><br>https://www.ontario.ca/laws/statute/98o15 | |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

**Ministry of Finance**

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

**Ministère des Finances**

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

**Treasury Board Secretariat**

Deputy Minister, Treasury Board
Secretary of Treasury Board and
Management Board of Cabinet

Room 5320, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1A1
Tel.: 416-325-1607
Fax: 416-325-1612

**Secrétariat du Conseil du Trésor**

Sous-ministre, Conseil du Trésor
Secrétaire du Conseil du Trésor et du
Conseil de gestion du gouvernement

Édifice Whitney, bureau 5320
99, rue Wellesley Ouest
Toronto (Ontario) M7A 1A1
Tél. : 416 325-1607
Téléc. : 416 325-1612

**Ministry of Energy**

Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**

Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ontario

Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario M5G 2C2

October 4, 2017

Dear Ms. Lysyk,

Thank you for the opportunity to review and provide feedback on your draft special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As per your letter to Deputy Thompson, dated September 26, 2017, our review focused on confirming the factual accuracy of the report. Please find enclosed succinct written comments and suggestions resulting from our ministries' coordinated review.

We have also enclosed a government response to the special report. Given the nature and the complexity of the issues, the response needed to be longer than the word limit you proposed.

As you know, as part of its preparations for the development of the implementation of the Government's Fair Hydro Act, Navigant Consulting was engaged to conduct analysis and prepare a report. The report was commissioned in June 2017 and completed at the end of September 2017. Although the report was not commissioned as a result of your audit or to respond to any questions raised by your office as part of your audit process, we believe it does contain information relevant to your audit. As per your letter which noted that we should share any other information that may be relevant, we felt it would be appropriate to share a confidential copy of the report with your office while we continue to assess whether the report will be made public.

.../con't

Once your office has had the opportunity to review the enclosed information, you may find it useful to have further meetings with ourselves and/or staff from our ministries. We will be pleased to make ourselves available to provide clarification or to answer any additional questions. Our Ministers would welcome the opportunity to meet with you to discuss your report and the government response during the week of October 9th.

The Ministry of Finance, Treasury Board Secretariat and the Ministry of Energy are committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

Sincerely,

Scott Thompson
Deputy Minister
Ministry of Finance

Helen Angus
Deputy Minister
Treasury Board Secretariat

Serge Imbrogno
Deputy Minister
Ministry of Energy

c. Steve Orsini, Secretary of the Cabinet
The Honourable Charles Sousa, Minister of Finance
The Honourable Liz Sandals, President of the Treasury Board
The Honourable Glenn Thibeault, Minister of Enegry

**Ministry of Energy**
Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**
Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ontario

**MEMORANDUM**

| | |
|---|---|
| MEMORANDUM TO: | Bonnie Lysyk<br>Auditor General of Ontario |
| FROM: | Serge Imbrogno, Deputy Minister<br>Ministry of Energy |
| SUBJECT: | Auditor General Request |
| DATE: | **October 3, 2017** |

As I committed to do in my September 1, 2017 letter, I am writing to update you on the progress of the Ministry of Energy in responding to your request for communications and material on the accounting/financing for the Fair Hydro Plan for the period from December 1, 2016 to May 31, 2017.

As you are aware, Ministry staff are currently engaged in a manual review of 144,513 records identified for us by McCarthys/Wortzmans in order to eliminate non-responsive material. As of today we have reviewed a total of 30,206 records and identified a total of 6,940 responsive to your request. Ministry staff identified 1,837 records as responsive since the last batch (fourth batch) and PDF versions of this batch (fifth batch) of responsive records are included on the enclosed USB. The password to the enclosed password-protected USB is "FairHydro17". Additional batches will be provided to you as they become available. The Ministry has thus far spent $41,775.75 on preparing these materials and does not intend to spend more than $60,000 on this request.

Some of the documents included on the USB contain information that is subject to solicitor-client privilege. Some documents have formed part of various submissions to Treasury Board and to Cabinet and are therefore Cabinet confidential. It is not our intention to waive any solicitor-client and/or Cabinet privilege attaching to the disclosed material. However, in light of the urgency of your request, we have not attempted to specifically highlight all such privileged information for you. For this reason, we would appreciate the opportunity to review any of our documents or information that you intend to reproduce publicly in order to identify any privilege concerns.

I assure you that this process remains a high priority for the Ministry. Should you have any questions or would like to discuss further, please feel free to contact Martin Schlaepfer at (416) 326-7688.

Sincerely,

Serge Imbrogno

c: Maud Murray, Legal Director, Legal Services Branch

NAVIGANT

# Assessment of the Alignment of the Costs and Benefits of Clean Energy Assets

**Prepared for:**

Blakes

***Prepared by:***
Navigant
Bay Adelaide Centre
333 Bay Street, Suite 1250
Toronto, Ontario M5H 2R2

navigant.com

Reference No.: 195515
September 29, 2017

Privileged and Confidential
Attorney-Client Communication/Attorney Work Product
Prepared at the Direction of Legal Counsel

# TABLE OF CONTENTS

**Glossary** ..... iii

**1. Overview** ..... 1

**2. ReAllocation Methodology** ..... 2

**3. Estimating the fair allocation curve** ..... 3

3.1 Status Quo Costs ..... 3
3.2 Fair Allocation Curve without Interest ..... 4
3.3 Debt Schedule and Interest Costs ..... 5
3.4 Fair Allocation Curve with Interest ..... 6

**4. Adjustments for 2005 to 2017** ..... 7

4.1 Overpayment Balance ..... 7
4.2 Adjusted Debt Schedule and Interest Costs ..... 8
4.3 Adjusted Fair Allocation Curve ..... 9
4.4 Net Reduction in Consumer Costs ..... 10

*Disclaimer*
*This report was prepared by Navigant Consulting Ltd. for Blake, Cassels & Graydon LLP for the purpose of informing legal advice from Blakes to the Ontario Ministry of Energy.*

*The work presented in this report represents Navigant's professional judgment based on the information available at the time this report was prepared. Navigant is not responsible for the reader's use of, or reliance upon, the report, nor any decisions based on the report. NAVIGANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.*

*Readers of the report are advised that they assume all liabilities incurred by them, or third parties, as a result of their reliance on the report, or the data, information, findings and opinions contained in the report.*

# GLOSSARY

**Clean energy benefits**: the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs

**Clean energy costs:** the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,
(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,
    (i) renewable energy generation or capacity,
    (ii) conservation and demand management,
    (iii) energy storage,
    (iv) energy efficiency,
    (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the Ontario Energy Board Act, 1998 and excluding such other contracts as may be prescribed,
(b) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998, and
(c) such other costs or estimated costs as may be prescribed;

**Clean energy initiative**: the policies of the Government of Ontario related to,
(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,
(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,
(c) promoting conservation, demand management and energy efficiency, and
(d) investing in energy infrastructure to ensure a clean, modern and reliable system;

**Fair Hydro Act:** A statute [or act] of the Legislative Assembly of Ontario designed to align clean energy costs with clean energy benefits.

# 1. OVERVIEW

Blake, Cassels & Graydon LLP (Blakes) retained Navigant Consulting Ltd. (Navigant), for the purpose of informing legal advice from Blakes to the Ontario Ministry of Energy. Blakes retained Navigant to:

1. Evaluate the extent to which clean energy costs are incurred over the same period as clean energy benefits;
2. Establish a methodology to reallocate clean energy costs to fully align with clean energy benefits;
3. Assess the associated refinancing costs; and
4. Develop an adjustment mechanism to account for differences between reallocated costs and actual costs prior to the implementation of the Fair Hydro Act.[1]

This analysis builds off the Navigant report *Assessment of the Operability of Clean Energy Assets Post Power Purchase Agreement Expiry* ("Asset Life Report"), which evaluated the feasibility of operating clean energy assets such as natural gas, wind, and solar power generation facilities beyond the term of their existing power purchase agreements, and the associated costs. Navigant determined that natural gas facilities in Ontario can operate for 40 years with prudent maintenance and some component replacement. Navigant also determined that wind and solar facilities can operate for 25 years, which can be extended to 50 years with a full repowering investment at the end of year 25.

Ontario ratepayers currently pay for the entire cost of constructing a natural gas, wind, and solar electricity generation asset over the term of their original power purchase agreement, which is generally 20 years. Provincial ratepayers pay for conservation programs in the year the costs are incurred. Similarly, over the period of 2009 to 2014, ratepayers made annual payments associated with the early shutdown of coal fired-generation assets.

However, the benefits associated with the natural gas, wind, and solar electricity generation assets are tied to their full useful life, which extends beyond the term of the original power purchase agreement. Similarly, the benefits associated with conservation and the early retirement of coal-fired electricity generation assets are tied to the avoided electricity generation and the avoided emissions, respectively. These benefits occur over the entire life of the conservation measures and the expected remaining life of retired coal-fired generation assets.

[1] Clean energy costs and clean energy benefits are as defined in the Fair Hydro Act, 2017.

# 2. REALLOCATION METHODOLOGY

The Fair Hydro Act allows for the reallocation of clean energy costs to 2047. As a result, Navigant's methodology only considers clean energy costs incurred between 2005 and the earlier of a clean energy assets end of life or 2047.

Navigant's methodology includes five major components.

### 1. Status Quo Costs

Develop a schedule of status quo costs for individual assets or groups of assets with similar characteristics (i.e. contract price, first year of operation, technology, fuel-type). The status quo clean energy costs include power purchase agreement payments, as well as ongoing operations and maintenance costs and repowering costs beyond the term of the power purchase agreement.

Determine the total cost associated with an individual asset or group of assets in the status quo from its commercial operation date, or the date the investment was made, until the earlier of the asset's end of life or 2047.

### 2. Fair Allocation Curve without Interest

Reallocate the total cost evenly over each year the asset is operational, or providing a clean energy benefit. Note this step assumes that costs can be reallocated without incurring additional debt or financing costs. The total cost in each year across all the clean energy assets is the fair allocation curve without interest costs ("FAC w/ No Interest Cost").

### 3. Debt Schedule and Interest Costs

In each year, the difference between the total status quo clean energy costs and the fair allocation curve without interest amount, represents the annual borrowing requirement (in early years) or principal repayment (in later years) associated with the reallocation of costs.

### 4. Fair Allocation Curve with Interest

The annual interest costs associated with the accumulated debt is added to the fair allocation curve without interest to determine the total cost to be passed through to ratepayers under the reallocation. The sum of the fair allocation amount without interest and the annual interest cost represents the fair allocation curve with interest ("FAC w/ Interest").

### 5. Fair Allocation Curve with Adjustment Period and Interest

Recognizing that consumers have paid the status quo costs since 2005, establish the amount of overpayment / underpayment that has occurred relative to the fair allocation curve with interest and use this overpayment / underpayment to adjust the fair allocation curve to reflect the targeted reductions eligible consumer costs under the Fair Hydro Act.

# 3. ESTIMATING THE FAIR ALLOCATION CURVE

This section describes the outcome of each of the first four components of the reallocation methodology described above.

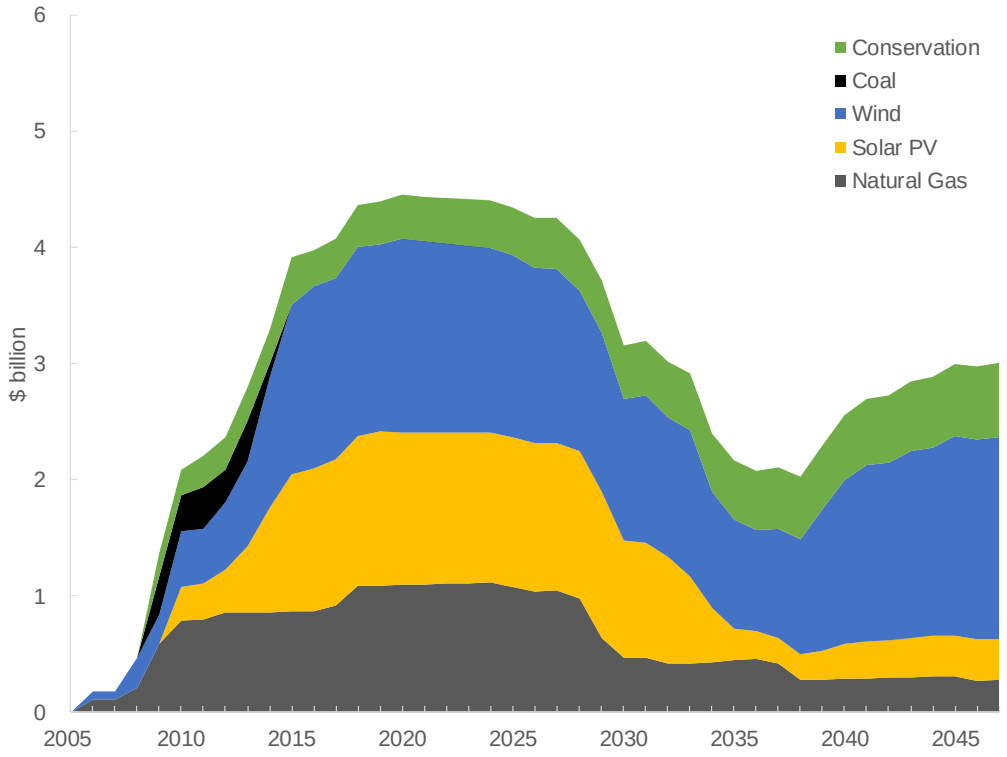
## 3.1 Status Quo Costs

The status quo costs for natural gas, wind, and solar photovoltaic generation resources are based on the terms of each assets' power purchase agreements. These costs were estimated based on known and estimated power purchase agreement prices and estimated production or contracted capacity levels. Following the expiry of the power purchase agreements, the status quo costs include estimated operating and maintenance expenditures and annual costs associated with the financing of any repowering costs.

The status quo costs also include the costs of conservation and demand management programs, and the costs (payments made by ratepayers) associated with the early shutdown of coal fired-generation assets. These costs are based on actual spending levels through 2016 and estimated spending levels through 2047.

As illustrated in the figure below, status quo costs are expected to peak at over CAD $4 billion in the 2020s and then decline in the 2030s as generation resources reach the end of the original term of their power purchase agreements. By the late 2030s repowering investments in wind, and to a lesser extent solar, put upward pressure on status quo costs.

**Figure 1. Status Quo Costs (nominal CAD)**




*Note: Analysis assumes a 2.0% annual inflation rate*
*Source: Navigant analysis*

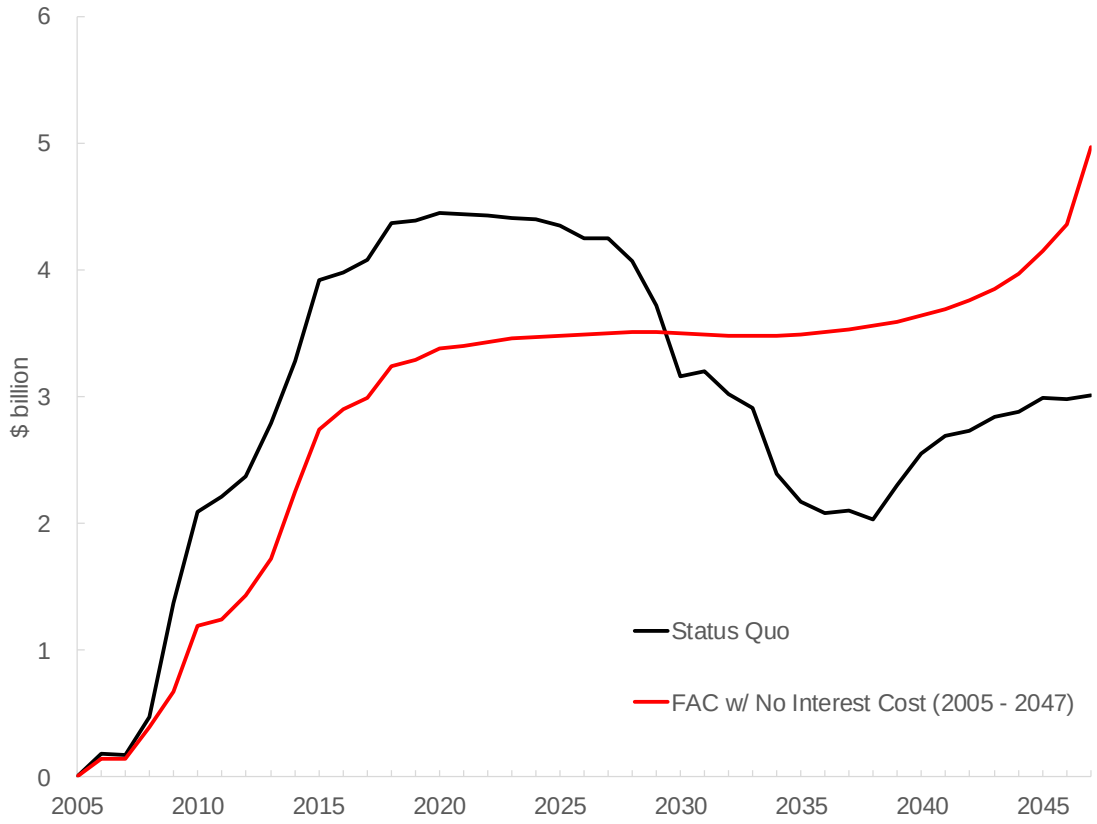
## 3.2 Fair Allocation Curve without Interest

Total status quo costs incurred between 2005 and 2047 for each asset were reallocated evenly over the useful life of each asset. The reallocation is carried out on an asset by asset or asset group by asset group basis and then aggregated to determine the total province-wide impact. This results in the fair allocation curve without interest.

As illustrated in the figure below, from 2005 to 2029, the status quo is higher than the fair allocation without interest. From 2030 onwards, the status quo is below the fair allocation without interest.

Both the status quo and fair allocation curve without interest ramp up significantly between 2005 and 2020. This is due to the increase in the number and size of clean energy assets, in particular natural gas, wind, and solar generation facilities, which increase to over 14,000 MW by 2020.

**Figure 2. Fair Allocation Curve without Interest**




*Source: Navigant analysis*

## 3.3 Debt Schedule and Interest Costs

The status quo costs represent existing obligations. Changing the amount of that obligation that is paid by ratepayers annually either results in a requirement to borrow funds to cover an underpayment or a credit of funds to recognize an overpayment.

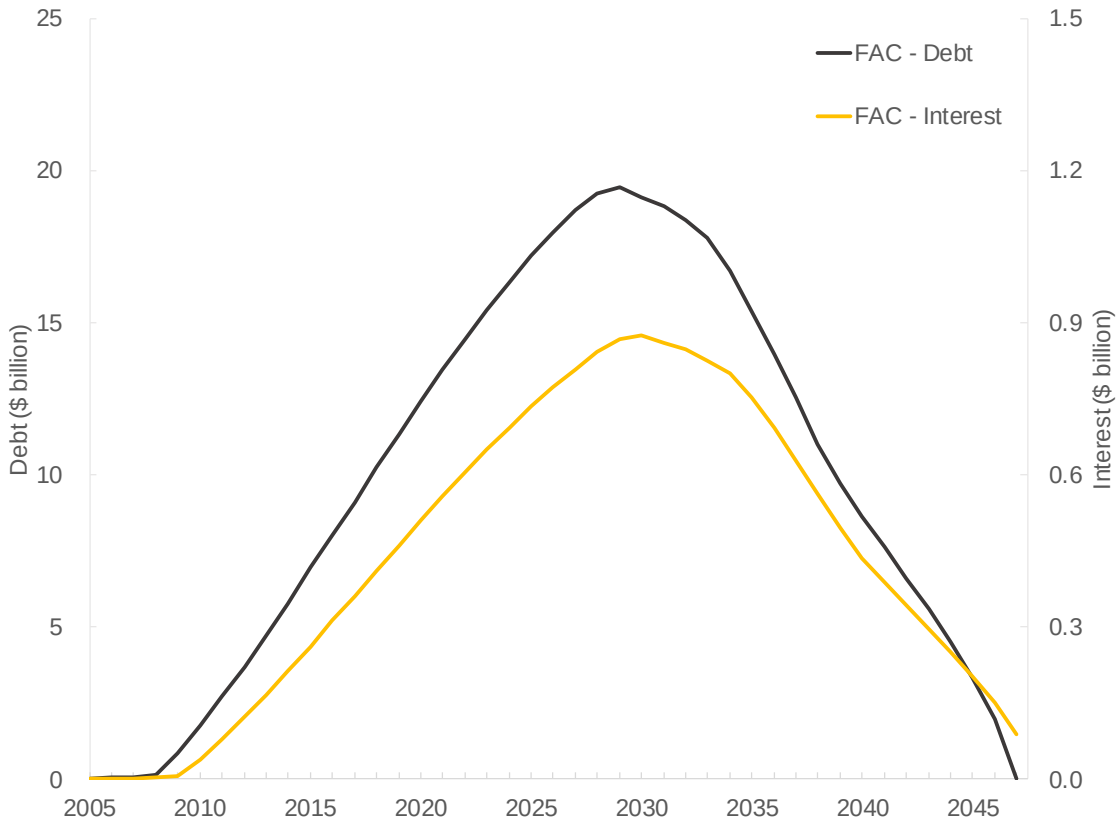
The difference between the status quo and the fair allocation curve without interest represents annual borrowing requirement (in early years) or principal repayment (in later years) required to finance the reallocation of costs on behalf of Ontario ratepayers.

As debt is accumulated in each year, the interest payments on the accumulated debt can either be passed through to customers or carried forward to future years and increase the level of accumulated debt. Navigant has modeled the impact of the reallocation on the basis that interest payments are passed through to ratepayers in the year they are incurred.

As illustrated in the figure below, accumulated debt increased to approximately CAD $19.5 billion by 2029 and the annual interest payment increases to approximately CAD $875 million over the same period.

At the end of 2047, all debt and interest costs associated with the fair allocation are paid off and ratepayers return to the status quo payment stream starting in 2048.

**Figure 3. Accumulated Debt and Annual Interest Amounts**

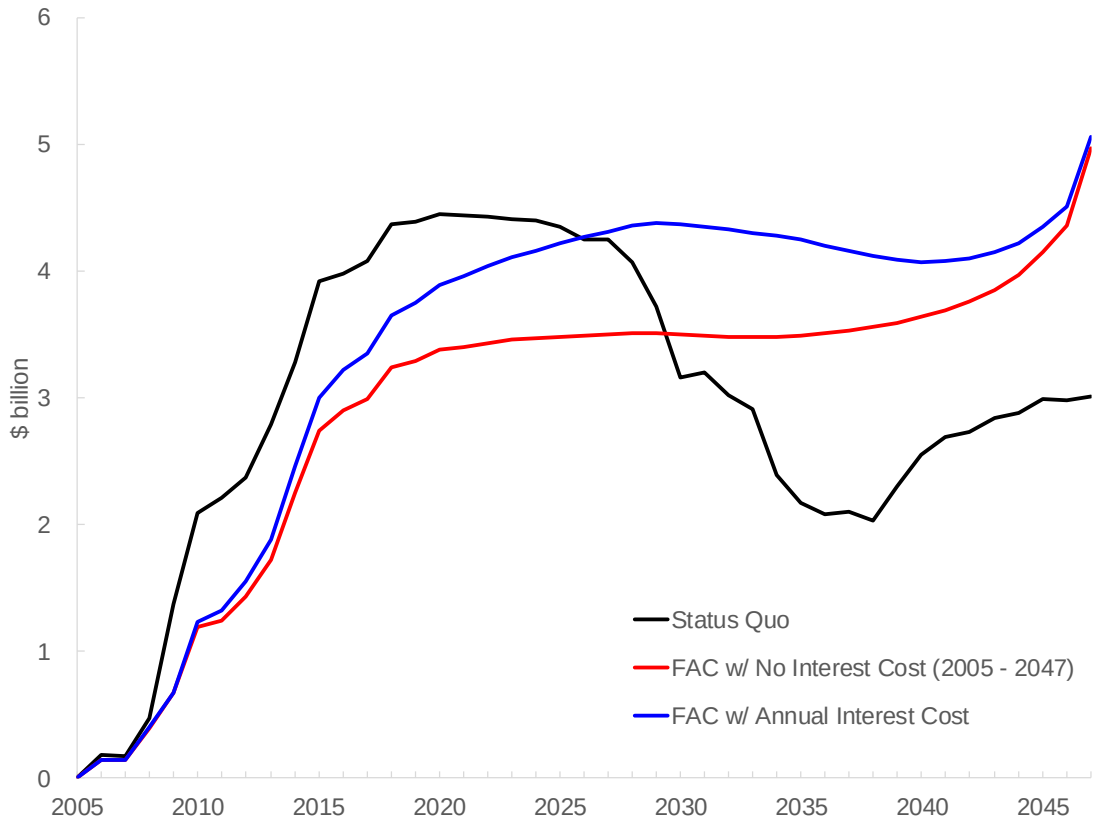



*Note: Analysis assumes a 4.5% cost of debt*
*Source: Navigant analysis*

## 3.4 Fair Allocation Curve with Interest

Layering the annual interest costs on top of the fair allocation curve without interest results in a fair allocation curve with interest costs. This represents the total reallocated cost in each year to be passed on to Ontario ratepayers.

**Figure 4. Fair Allocation Curve with Interest Costs**



# 4. ADJUSTMENTS FOR 2005 TO 2017

This section describes the outcome of the fifth component of the reallocation methodology described above.

Since 2005 ratepayers in Ontario have paid the status quo costs. As illustrated in the figure above, these costs were higher than the fair allocation curve with interest. The accumulated overpayment, including interest to the benefit of ratepayers, from 2005 up to the end of 2016 represents the amount that can be used to achieve the target reduction in eligible consumer costs under the Fair Hydro Act.

## 4.1 Overpayment Balance

From 2005 to the end of 2016, considering interest accrued on overpayments, ratepayers overpaid relative to the fair allocation with interest by approximately CAD $8 billion. This overpayment balance represents the amount that can be used to achieve the target reduction in eligible consumer costs in 2017 ($1.396 billion), 2018 ($2.189 billion), 2019 ($2.296 billion), 2020 ($2.414 billion) and 2021 ($2.204 billion). At the end of 2021, there remains an overpayment balance of approximately CAD $2 billion. This amount is repaid to customers over the next three years in a manner that limits the year-over-year rate increase. By the end of 2023 the overpayment balance is completely depleted.

**Figure 5. Overpayment Balance**

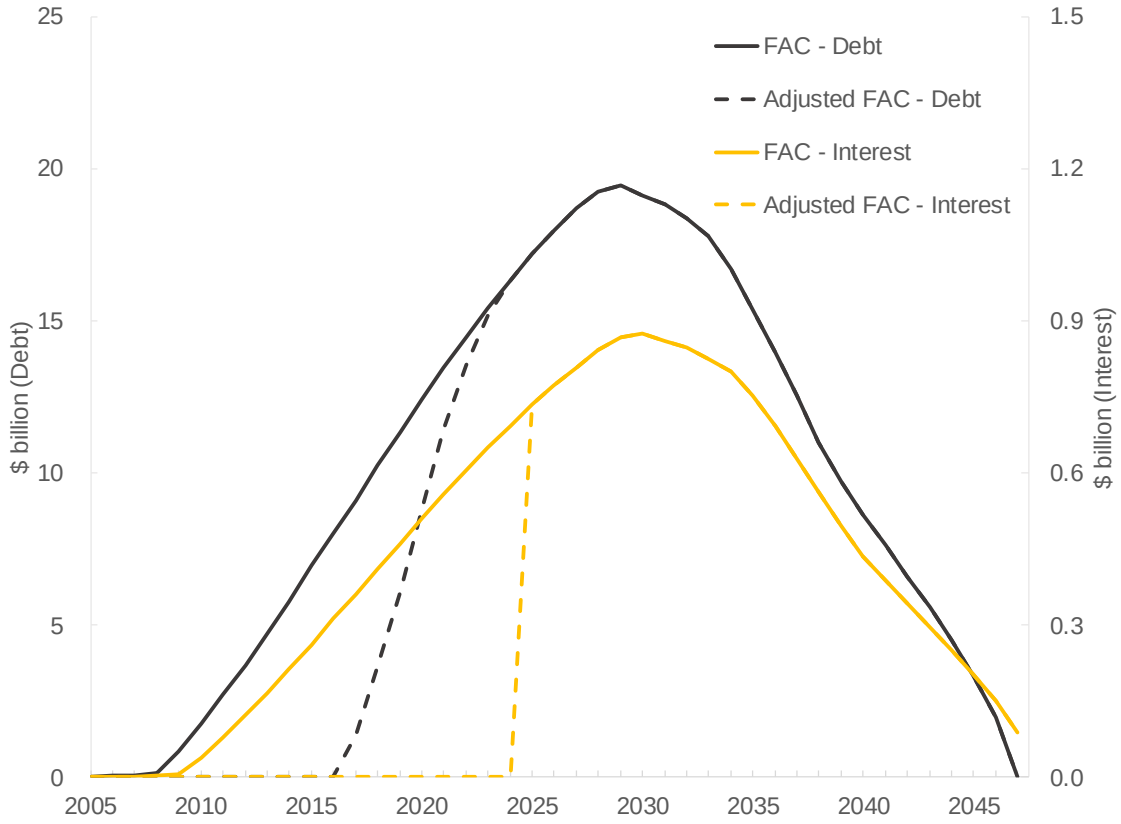
*Source: Navigant Analysis*

## 4.2 Adjusted Debt Schedule and Interest Costs

The fact that ratepayers paid the status quo costs from 2005 through 2016, and the overpayment balance will be used to provide deeper reductions in eligible consumer costs between 2017 and 2022 changes the debt schedule and interest costs relative to the fair allocation described earlier in this report.

No incremental debt was accumulated through 2016, because ratepayers paid the status quo costs. From 2017 to 2024, incremental debt will accumulate faster as the overpayment balance is depleted. Over the period where the overpayment balance is depleted, interest costs are carried forward to future years and increase the level of accumulated debt[2]. As illustrated in the figure below, starting in 2025, after the adjustment period, both the accumulated debt and the annual interest payments return to the same level as in the fair allocation described earlier in this report.

**Figure 6. Adjusted Accumulated Debt and Annual Interest Amounts**




*Note: Analysis assumes a 4.5% cost of debt.*
*Source: Navigant Analysis*

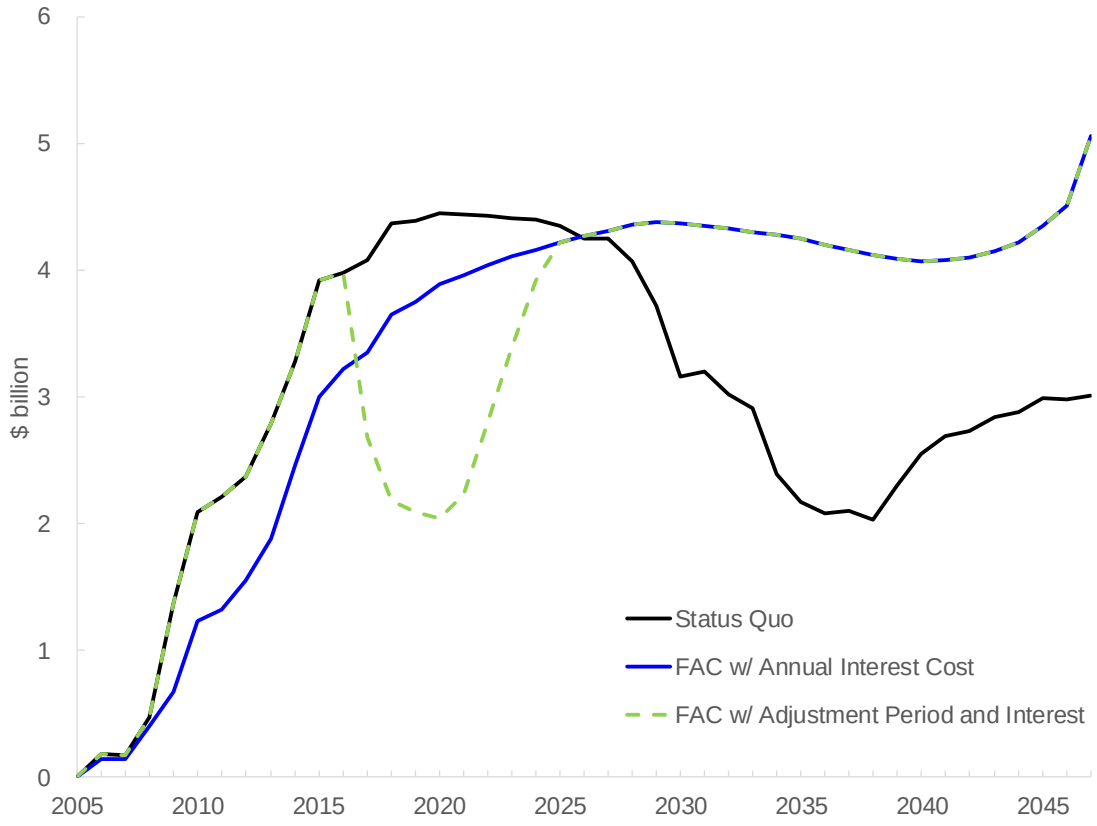
[2] Accumulating the interest costs during the adjustment periods allows ratepayers to realize the full target reductions under the Fair Hydro Plan.

## 4.3 Adjusted Fair Allocation Curve

The adjusted fair allocation curve with interest follows the status quo costs through 2016. Starting in 2017, based on the targeted reduction in eligible consumer costs under the Fair Hydro Act, it drops below the unadjusted fair allocation curve with interest. It remains below during the adjustment period until 2025 when the overpayment balance is depleted and the accumulated debt and annual interest costs return to unadjusted levels.

From 2025 onwards the levels of accumulated debt are consistent with the reallocation described earlier in this report and the interest costs are passed through annually to ratepayers. As a result, from 2025 onwards the actual adjusted fair allocation curve with interest is the same as the unadjusted fair allocation curve. This is illustrated in the figure below.

**Figure 7. Fair Allocation Curve with Adjustment Period and Interest**

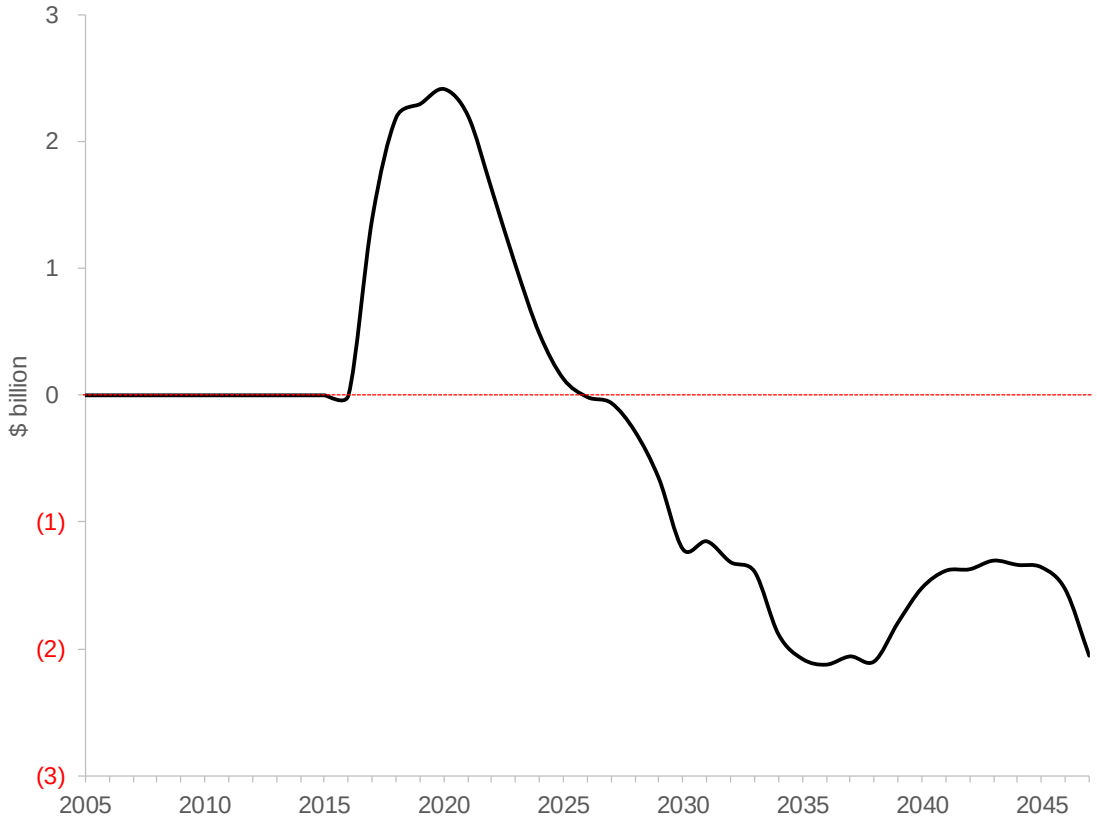



*Source: Navigant analysis*

## 4.4 Net Reduction in Consumer Costs

The difference between the status quo costs and the fair allocation curve with the adjustment period and interest costs represents the annual net reduction (positive) and increase (negative) in eligible consumer costs and is illustrated in the figure below.

**Figure 8. Annual Reduction (+) / Increase (-) in Eligible Consumer Costs**




*Source: Navigant analysis*

NAVIGANT

# Assessment of the Operability of Clean Energy Assets Post Power Purchase Agreement Expiry

**Prepared for:**

Blakes

**Prepared by:**
Navigant
Bay Adelaide Centre
333 Bay Street, Suite 1250
Toronto, ON M5H 2R2

navigant.com

Reference No.: 195515
September 29, 2017

Privileged and Confidential
Attorney-Client Communication/Attorney Work Product
Prepared at the Direction of Legal Counsel

# TABLE OF CONTENTS

**Glossary** ..... iii

**1. Overview** ..... 1

**2. Technical Feasibility of Lifetime Extension for Clean Energy Assets** ..... 2

2.1 Planning and Design Experience ..... 2
2.1.1 Natural Gas ..... 2
2.1.2 Wind ..... 4
2.1.3 Solar ..... 4
2.1.4 Current State of Operating Fleet ..... 5
2.1.5 Component Failure Rates and Operating Life ..... 13
2.2 Leasing, Regulatory, and Contract Issues ..... 19
2.2.1 Leasing Structure ..... 19
2.2.2 Regulatory Issues ..... 19

**3. Cost of Lifetime Extension and Repowering** ..... 21

3.1 Repowering and Extension Options ..... 21
3.1.1 Life Cycle of Plants under Normal Operations and Maintenance ..... 21
3.1.2 Cost of Repowering for Lifetime Extension ..... 22
3.2 Leasing, Regulatory, and Other Costs ..... 26

**4. References** ..... 27

***Disclaimer***
*This report was prepared by Navigant Consulting Ltd. for Blake, Cassels & Graydon LLP on behalf of the Ontario Ministry of Energy.*

*The work presented in this report represents Navigant's professional judgment based on the information available at the time this report was prepared. Navigant is not responsible for the reader's use of, or reliance upon, the report, nor any decisions based on the report.* ***NAVIGANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED****.*

*Readers of the report are advised that they assume all liabilities incurred by them, or third parties, as a result of their reliance on the report, or the data, information, findings and opinions contained in the report.*

# GLOSSARY

**Clean energy benefits**: the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs

**Clean energy costs:** the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,
(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,
    (i) renewable energy generation or capacity,
    (ii) conservation and demand management,
    (iii) energy storage,
    (iv) energy efficiency,
    (v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the Ontario Energy Board Act, 1998 and excluding such other contracts as may be prescribed,
(b) payments made or expected to be made under section 78.5 of the Ontario Energy Board Act, 1998, and
(c) such other costs or estimated costs as may be prescribed;

**Clean energy initiative**: the policies of the Government of Ontario related to,
(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,
(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,
(c) promoting conservation, demand management and energy efficiency, and
(d) investing in energy infrastructure to ensure a clean, modern and reliable system;

**Fair Hydro Act:** A statute [or act] of the Legislative Assembly of Ontario designed to align clean energy costs with clean energy benefits.

# 1. OVERVIEW

Blake, Cassels & Graydon LLP (Blakes) retained Navigant Consulting Ltd. (Navigant), for purposes of informing legal advice from Blakes to the Ontario Ministry of Energy, to determine the feasibility of operating clean energy assets past the original power purchase agreement term and the associated costs. The analysis considered a subset of clean energy assets, namely natural gas, wind, and solar electricity generation facilities under contract with Ontario's Independent Electricity System Operator (IESO).

Two primary questions are addressed in this report.

1) What is the technical feasibility of operating clean energy assets beyond the original twenty-year power purchase agreement term?
2) What are the costs of operating the clean energy assets over their useful life, considering prudent maintenance and repowering expenditures, which would be borne by ratepayers after the twenty-year power purchase agreement term?

Ontario's natural gas-fired electricity generating facilities are expected to operate for 40 years with prudent maintenance and capital expenditure. Ontario's wind and solar electricity generating facilities are expected to operate for 25 years, or 50 years provided they undergo a major repowering (or refurbishment) in and around year 25.

The second question determines the costs, in addition to the payments under the original power purchase agreements that would be borne by Ontario ratepayers if the clean energy assets operated over their entire useful life. These costs cover on-going operations and maintenance, as well as repowering and/or major maintenance as required. A table of important technology assumptions is provided in Table 1-1.

**Table 1-1 Clean Energy Asset Technology Assumptions**

| Technology | Parameter | Value |
|---|---|---|
| Natural Gas | Repowering Cost (2017$/kW) | Plant-Specific |
| Natural Gas | Year 1 Fixed O&M (2017$/kW-yr) | Plant-Specific |
| Wind | 2040 Repowering Cost (2017$/kW) | $2,300 |
| Wind | Year 1 Fixed O&M (2017$/kW-yr) | $49 |
| Wind | Fixed O&M Escalation | 2% |
| Wind | Initial Capacity Factor | 32% |
| Wind | Repowered Capacity Factor | 37% |
| Wind | Capacity Factor Degradation | 1.6% |
| Solar | 2040 Repowering Cost (2017$/kW) | $930 |
| Solar | Year 1 Fixed O&M (2017$/kW-yr) | $27 |
| Solar | Fixed O&M Escalation | 2% |
| Solar | Initial Capacity Factor | 16% |
| Solar | Repowered Capacity Factor | 16% |
| Solar | Capacity Factor Degradation | 0.5% |

*Source: Navigant analysis*
*Note: Values presented in the table have been rounded to the nearest 10 or 100*

# 2. TECHNICAL FEASIBILITY OF LIFETIME EXTENSION FOR CLEAN ENERGY ASSETS

This section outlines the assumptions and research underlying the expected lifetimes for the clean energy analysis. It is broken into three subsections, exploring (1) standard practice and experience when planning and designing clean energy assets, (2) the state of the Ontario fleet, and (3) leasing, regulatory, and contract issues associated with lifetime extension. Each of these subsections is further divided between natural gas, wind, and solar assets. The expected lifetimes were formulated using a combination of interviews, literature review, and consulting publicly available and Navigant proprietary databases.

Overall, no significant leasing, regulatory, or contract issues were identified which would limit lifetime extension. Navigant ultimately identified a useful life of forty years for the natural gas assets (with partial repowering in some cases), and a useful life of twenty-five years for solar and wind assets (with another twenty-five years possible after full repowering), after investigating the design and component failure rates and replacement costs for these asset classes.

## 2.1 Planning and Design Experience

### *2.1.1 Natural Gas*

Power stations utilizing natural gas are most frequently developed assuming a twenty-year life of the plant design, which is often dictated by the terms of commercial contracts. The actual plant life, however, can exceed forty years if the operator follows prudent operations and maintenance (O&M) practices and the recommend repair and replacement intervals for combustion turbine hot section components and balance of plant equipment.

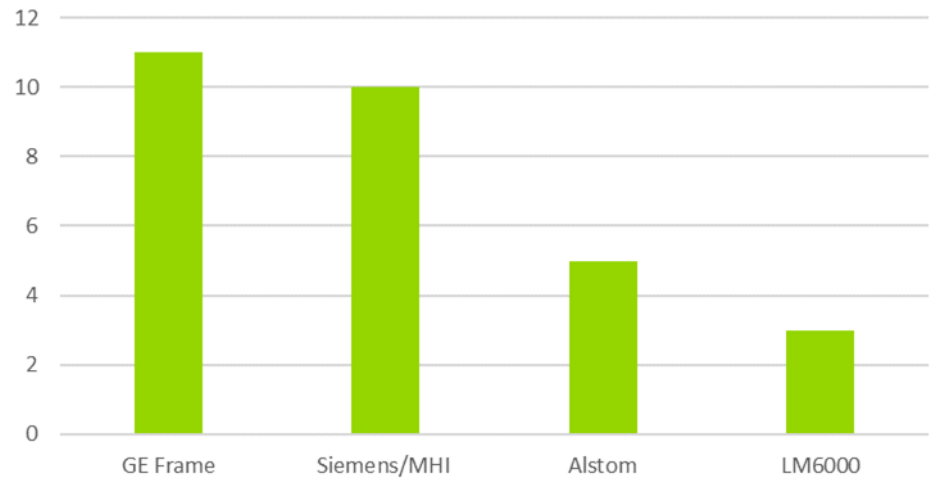
Most recently constructed natural gas power stations in Ontario (and throughout North America) utilize combustion turbines as the prime mover, either in simple cycle or combined cycle configuration. In simple cycle configuration, the combustion turbine directly drives a generator, requiring relatively fewer pieces of equipment, which lowers the cost per kilowatt (kW) of capacity. In combined cycle configuration, the exhaust heat from the combustion turbine is recovered in a heat recovery steam generator which produces steam to drive a steam turbine generator. This maximizes efficiency of the energy conversion of natural gas to electricity, but at a higher installed capacity cost than simple cycle configuration. In addition, some plants in Ontario were designed for co-generation, where a percentage of the steam produced in the combined cycle application is delivered and used in non-electric processes.

The three types of units discussed above, simple cycle, combined cycle and co-generation, have different design parameters. The simple cycle units are fast-starting units that are designed for peaking applications to either stabilize the electrical grid with ancillary services, or to provide energy to the grid during times of high demand. Simple cycle units are typically designed for a low number of starts, less than fifty per year and are generally operated by a small operations staff.

There are 29 combustion turbines at the 16 gas-fired power stations in Ontario, of which the units at thirteen were included in the model analysis (the remainder were in service prior to 2005, the analysis start year). Twenty-six of Ontario's combustion turbines are heavy frame type units and three are aero derivative units. The frame turbines include the Frame 7 series manufactured by General Electric (GE), the 501F/G series manufactured by Siemens/Mitsubishi Heavy Industries (MHI), and the GT11 series manufactured by Alstom. The three aero derivative turbines are all versions of the LM6000 turbine

manufactured by GE. The distribution of Ontario's gas-fired combustion turbine manufacturers is shown in Figure 2-1 below.

**Figure 2-1 Ontario Combustion Turbines by Manufacturer**




*Source: SNL, ABB Energy Velocity, and Navigant Analysis*

The major maintenance and combustion turbine parts purchases are covered under long-term service agreements or contractual service agreements with the original equipment manufacturer. These agreements are very specific and require that the combustion turbines be stopped and maintenance be conducted at the required intervals specified by the manufactures.

Combined cycle units were initially envisioned in the early 1990's as baseload power stations, however over time they changed to mid-merit units that assume load when renewable generation drops off and during periods of high demand. Though slower to start than simple cycle units, combined cycle units can still be brought online quickly to provide larger amounts of energy to the grid than simple cycle units. Given the mid-merit dispatch of these units, combined cycle units are typically designed to start between 150-250 times per year.

Co-generation units are highly efficient and either deliver part of the steam from the heat recovery steam generator to a steam host, or in the case of combined heat and power units, use the steam to generate hot water or cold water for various heating and/or cooling applications. Co-generation units are typically designed for baseload operations (less than 10 starts per year) to serve the steam host, and can meet the steam demand while fluctuating the amount of power generated.

Over the last 15 years the rate of natural gas fired power station development has increased due to lower natural gas prices, environmental regulations (including $CO_2$ reduction mandates), and the increasing value of flexibility for renewable generation firming. With the growing penetration of renewable energy sources in the Ontario market Navigant has observed that natural gas stations have shifted from principally being dispatched during the day time to cover peak loads to being principally dispatched to firm renewable energy and maintain reliability during periods when wind and solar power plants drop off.

As units reach the end of their power purchase agreements (usually 20 years), they have many lifetime extension options available. As mentioned, combustion turbines can operate for 40 years if proper operations and maintenance practices have been followed. Most combustion turbines have a major inspection that is required on the turbine rotors at either 200,000 factored fired hours/equivalent base

hours or 5000 factored starts. The rotor is pulled, disassembled, and inspected to determine if there has been damage to the turbine wheels; when this is complete the rotors are reassembled and can be certified for another 100,000 hours of operations. Given the dispatch regime of units analysed, most the units did not reach this milestone during the first 20 years of operation, and some units did not require it over a forty-year operating life. The heat recovery steam generators can also be operated for more than 20 years with proper repairs and replacement of components in the heat affected zones, the super-heater sections, and high flow rate areas such as the economizer. Steam turbines and generators also have expected lives of at least 40 years if the proper maintenance and inspections are conducted at the recommended intervals.

Given the concurrent expected life of 40 years for combustion turbines, steam turbines, and generators Navigant believes a general expected life of 40 years for natural gas plants is appropriate. Section 2.1.4.1 discusses in more detail current state of Ontario's natural gas fleet to determine if the general expected life is a reasonable assumption.

### *2.1.2 Wind*

Until recently, wind plants were generally built with an expected operational life of 20 years. Today, many wind project developers have increased the expected operational life to 25 or even 30 years. This increase in the expected operational life of wind plants is reflective of reliability improvements in key components such as gearboxes, and that repairs and replacements to components can extend longevity of a wind plant.

The lifetime expectancy of individual components within a wind plant vary widely. The towers are mostly steel and last 50 to 100 years. The foundations and cables have similar lifetimes. The gearboxes generally last 5 to 7 years and therefore are replaced twice on average over a 20 year period. Lastly, blades generally last 10 to 12 years and therefore are replaced once on average over a 20 year period.

Furthermore, the accuracy of wind plant forecasts has improved over time. In the early years of the industry, plants consistently underperformed compared to forecasts of availability, reliability, and cost. More recently, cost and reliability forecasts have become more accurate due to technology advancements in manufacturing and operation of wind turbine components as well as the wealth of industry experience that is now available for forecasting purposes.

Most wind plants have decommissioning plans in place, as required either by lenders or leaseholder agreements. These plans generally call for complete removal of the equipment and reclamation of the land for a suitable use. However, most owners expect that the wind turbines will be either be refurbished (replaced with similar components) or fully repowered (replaced with larger components) at least once prior to the ultimate removal of equipment.

Given that core equipment components are likely to be replaced at least once during the first 20-years of operation of a facility and that typical planning and investment decisions are based on an assumed 25-year operation life, Navigant believes the general expected useful life for a wind facility is 25 years. Section 2.1.4.2 discusses in more detail current state of Ontario's wind resources to determine if the general expected life is a reasonable assumption.

### *2.1.3 Solar*

Solar facilities in Ontario have 20-year power purchase agreements, obtained through either the renewable energy standard offer program (RESOP), feed-in-tariff (FIT) or large renewable procurement

(LRP) programs. Twenty-year power purchase agreement terms are typical in the US and other markets, although some can be for less than 20 years.

Several public and private tools have become available to forecast production over the lifetime of a solar asset. Performance of solar facilities relies on key inputs such as system capacity, configuration (fixed tilt vs. single-axis or dual-axis tracker technology) and location. These forecasting models also account for losses due to shading and snow, as well as DC/AC losses. Over time, these models have become more sophisticated and more accurate, resulting in generation experience being consistent with planning assumptions.

As photovoltaic module technology progresses, the technical lifespan of panels has increased from 20 to 25 years, and even 30 years for more advanced models. The lifespan of other components has improved at a slower rate. Ground-mount racking is typically constructed of galvanized steel and aluminium with a 20-year warranty from the manufacturer. Standard warranties for inverters are typically 10 years in duration (an increase from the historical 5 years) with extended options available at extra cost. The technical lifetime for system wiring is typically 12 years. Therefore, inverters and wiring are replaced at least once on average over a 20-year lifetime.

Today, many solar project developers have increased the expected operational life to 25 years for planning and investment decisions. Decommissioning usually doesn't include equipment reuse, as the second set of inverters and wiring would be near end of life and panel technology is advancing quickly enough that it would likely not be reused either.

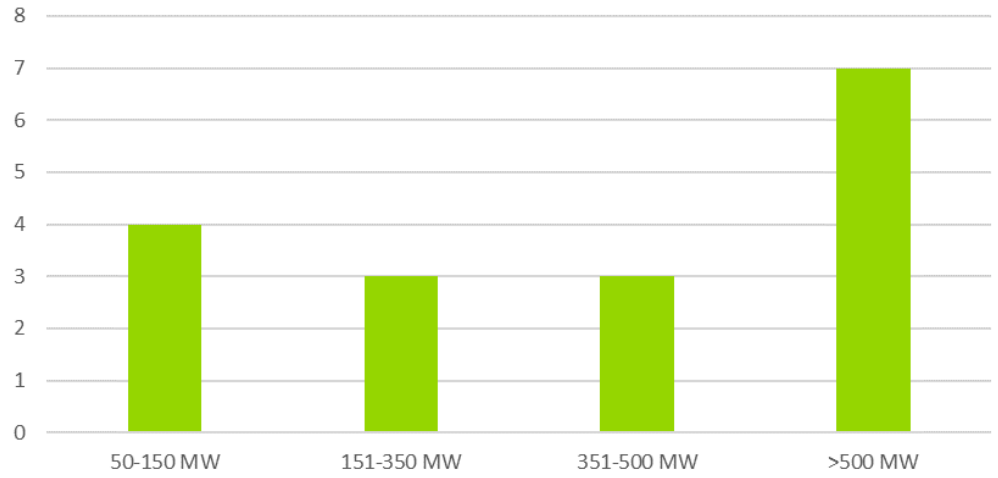
Given that core equipment components, such as inverters and wiring, are likely to be replaced at least once during the first 20-years of operation of a facility, and that the expected lifespan of the panels has increased along with the typical expected operational life for planning and investment decisions to 25-years, Navigant believed the general expected useful life for a solar facility is 25 years. Section 2.1.4.3 discusses in more detail current state of Ontario's solar fleet to determine if the general expected life is a reasonable assumption.

### *2.1.4 Current State of Operating Fleet*

#### *2.1.4.1 Natural Gas*

A total of 16 natural gas-fired power plants located in Ontario were evaluated with a total installed capacity of 7,291 MW. Of these, 13 plants were considered in this analysis as the remainder of the natural gas fired plants were in service prior to 2005. Most plants were combined cycle but some were also co-generation or simple cycle. The plants had installed capacities ranging from 73 MW to 1,005 MW, with the average installed capacity being 456 MW. The distribution of the natural gas-fired power plants by installed capacity can be seen in Figure 2-2 below.

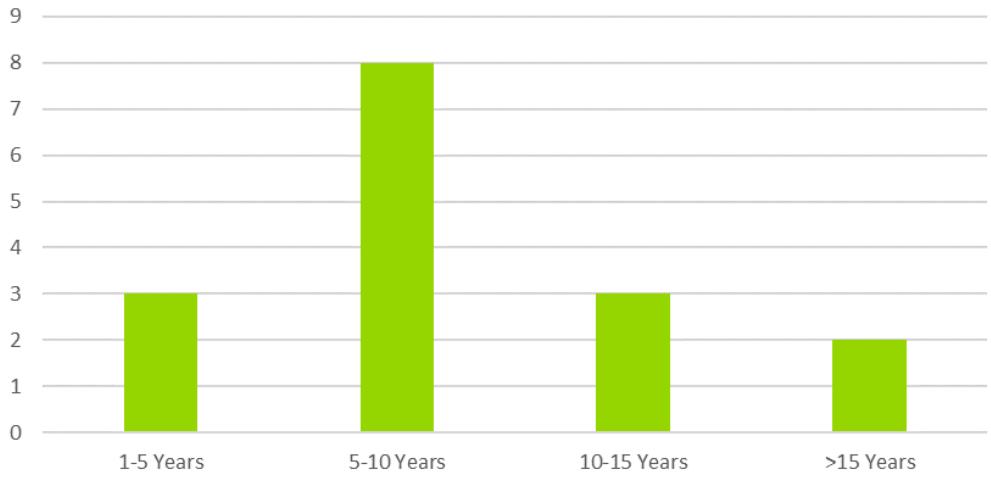
**Figure 2-2 Size Distribution of Gas-Fired Generating Stations in Ontario**




*Source: Navigant Analysis*

The average age of the gas-fired plants was nine years, with the oldest being the Cardinal Power Plant which is 23 years old and the newest being the Nappanee Generating Station which is under construction with a milestone commercial operation date of December 2018. Most plants have been in service for under 10 years, as shown in Figure 2-3 below.

**Figure 2-3 Age Distribution of Gas-Fired Generating Stations in Ontario**

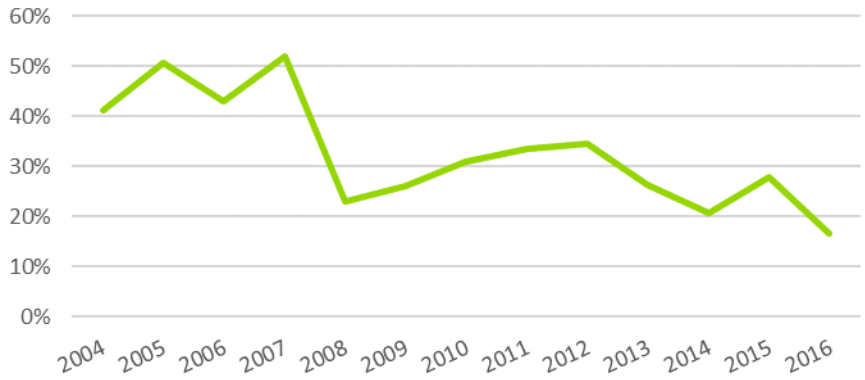



*Source: Navigant Analysis*

The net capacity factors for the different type of gas-fired power plants in Ontario have trended downward. Combined cycle units achieved a peak capacity factor in 2007, when there were only two units in commercial operation, of 52%. As more units came online after 2008 the net capacity factor dropped to the mid 20% range and rose through 2012 to 34%. Since 2012, however, the net capacity factor has shown a downward trend as demonstrated in Figure 2-4. Capacity factors have declined in recent years due to renewable builds, the return of some nuclear generating stations to service, low provincial load growth, and reduced power prices in neighbouring jurisdictions. These factors have been partially offset

by the retirement of Ontario's coal fleet, but reduced capacity factors in the later years of those stations limited the upside for the natural gas-fired fleet.

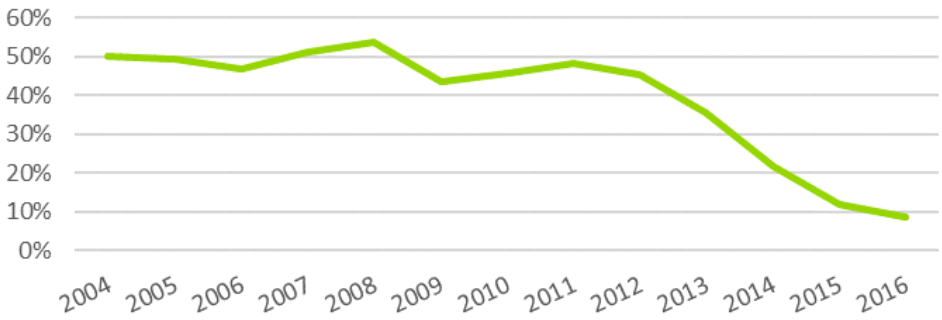
**Figure 2-4 CCGT Annual Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

Cogeneration units have also shown a similar trend in capacity factors. From 2004 through 2012, the capacity factor was almost flat at around 50%; however, since 2012, the net capacity factor has shown a steep decline to 9% in 2016 as shown in Figure 2-5 below.

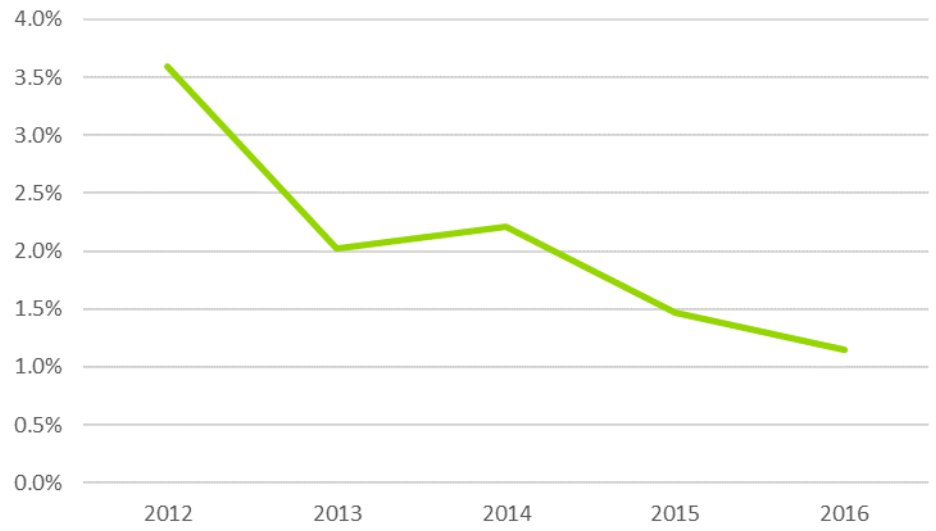
**Figure 2-5 Co-Generation Annual Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

The single simple cycle power station, York Energy Centre, which came on line in 2012 has shown a steady downward trend from 4% in 2012 to 1% in 2016 as demonstrated in Figure 2-6.

**Figure 2-6 Simple Cycle Net Capacity Factor (Ontario)**




*Source: ABB Energy Velocity*

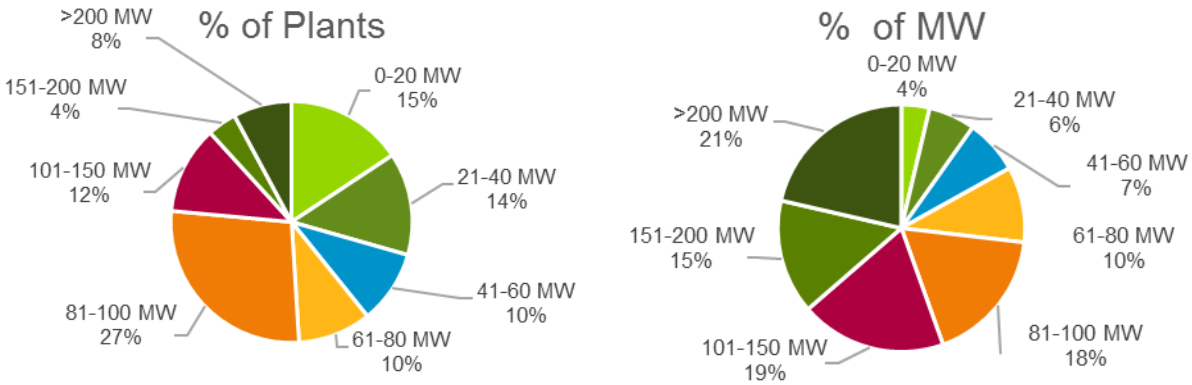
Given the relatively low utilization of the Ontario gas fleet as measured by capacity factor, starts, and hours of operation, Navigant estimates that the plants have a dependable life of 40 years, with a few plants requiring a major rotor replacement, mostly past year 25, over the 40-year life.

### *2.1.4.2 Wind*

The following is a profile of the wind fleet in Ontario as of year-end 2016.

- Number of Plants and MW. There were 656 wind plants in operation in Ontario with a total capacity of 4,751 MW.
- Size Distribution. As shown on the left side of Figure 2-7 below, the most common wind plant size in Ontario is 81-100 MW, with 27% of wind plants, followed by the 21-40 MW segment with 14% of wind plants. On a MW capacity basis, the right side of Figure 2-7 below shows that the >200 MW is the largest segment with 21% of total MW, followed by the 101-150 MW segment with 19% of total MW.

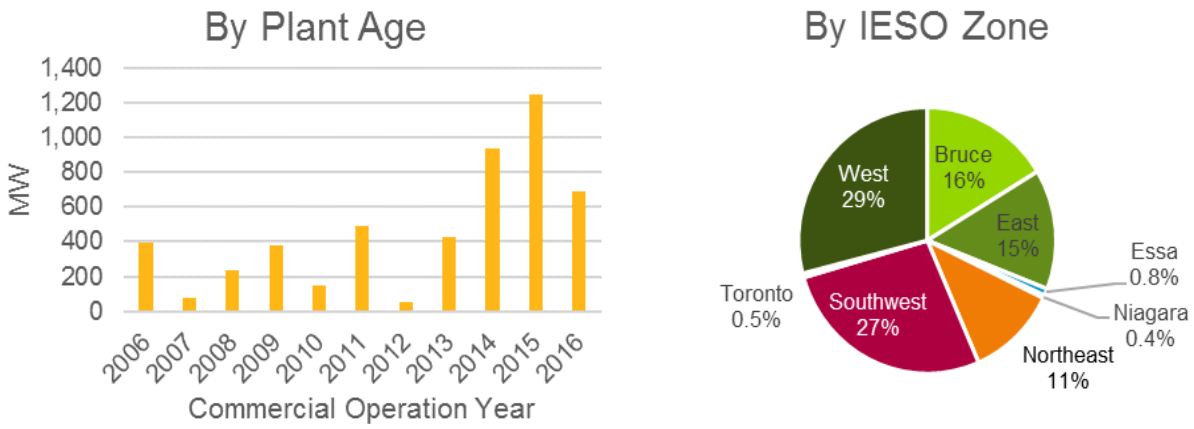
**Figure 2-7 Distribution of Wind Plants**




*Source: Navigant Analysis*

- Age Distribution. As shown on the left side of Figure 2-8 below, 2015 saw the highest amount of new wind capacity, when 1,250 MW of capacity was brought online. Fifteen plants with 557 wind turbine generators were started up in Ontario in 2015.
- Location. As shown on the right side of Figure 2-8 below, the West and Southwest zones (as defined by Ontario's Independent Electricity System Operator) had the most wind power capacity, with 29% and 27% of installations, respectively.

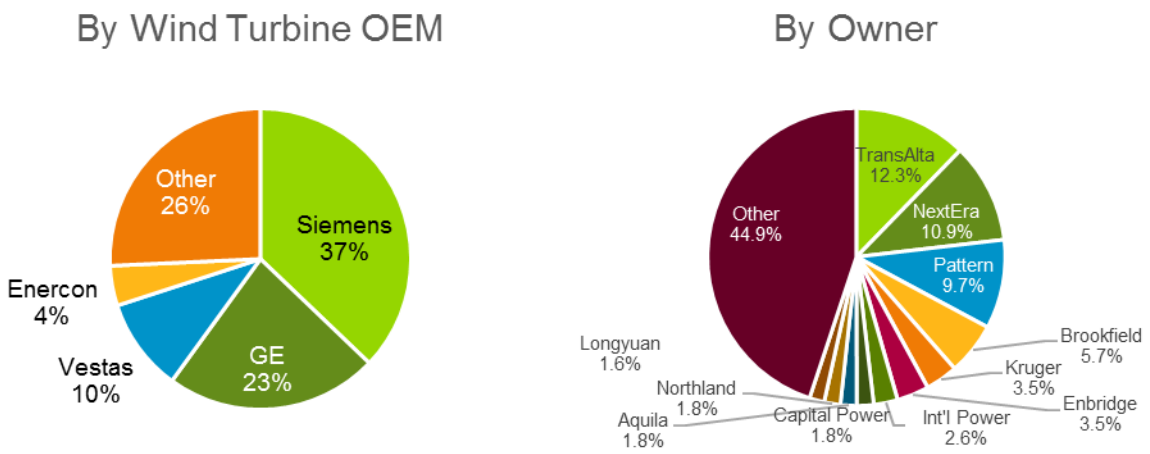
**Figure 2-8 Age and Location of Wind Plants (Ontario)**




*Source: Navigant Analysis*

- Wind Turbine OEM Market Share. As shown on the left side of Figure 2-9 below, the winter turbine generator market in Ontario is relatively concentrated, with 74% of the market controlled by the top 4 suppliers: Siemens (37%), GE (23%), Vestas (10%), and Enercon (4%).
- Wind Plant Owner Market Share. As shown on the right side of Figure 2-9 below, the wind plant ownership market in Ontario is relatively dispersed, with only 53% of the market controlled by the top 10 owners. The leading owners are TransAlta Utilities (12%), NextEra Energy (11%), and Pattern Energy (10%).

**Figure 2-9 Turbine OEMs and Owners of Wind Plants (Ontario)**

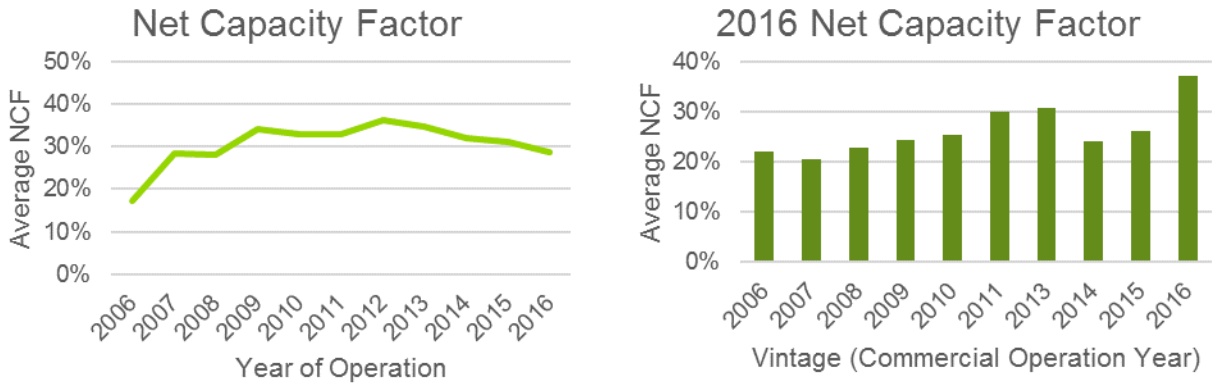



*Source: SNL, ABB Energy Velocity, Navigant Analysis*

- Net Capacity Factor. As shown on the left side of Figure 2-10 below, the average net capacity factor for wind plants in Ontario was 29% in 2016. This value is slightly lower than the 2012 peak of 36% but considerably higher than the 2006 average of 17%. The slight reduciton since 2012 may be due to lower winds, increased curtailment due to transmission constraints, or the impact of a few smaller plants with lower net capacity factors starting up in 2014.

  The right side of Figure 2-10 below shows average 2016 net capacity factors for wind plants in Ontario by vintage (commercial operation year). The trend is generally upwards, meaning that newer wind plants generally have higher net capacity factors compared to their older counterparts. The average 2016 net capacity factors for plants that started up in 2016 was 37%, considerably higher than any other vintage.

**Figure 2-10 Net Capacity Factor of Wind Plants (Ontario)**




*Source: ABB Energy Velocity*

- Plant Condition and Operations and Maintenance Practices. Wind plants in North America typically have winter turbine generator warranties in place for the first two to five years of operation. During the warranty period maintenance is typically performed by the wind turbine generator vendor. When maintenance is performed by an operator other than the original equipment manufacturer, the operator will follow the original equipment manufacturer's maintenance practices as required to maintain the warranty. Most wind plants are therefore usually in excellent condition for the first two to five years of operation regardless of the operator. Two-thirds of the Ontario fleet have been in operation five years or less, so the average Ontario wind plant is generally in very good condition.

Given the age, operating condition, and general maintenance practices at most of Ontario's wind fleet, Navigant estimates that the plants have a dependable life of 25 years.

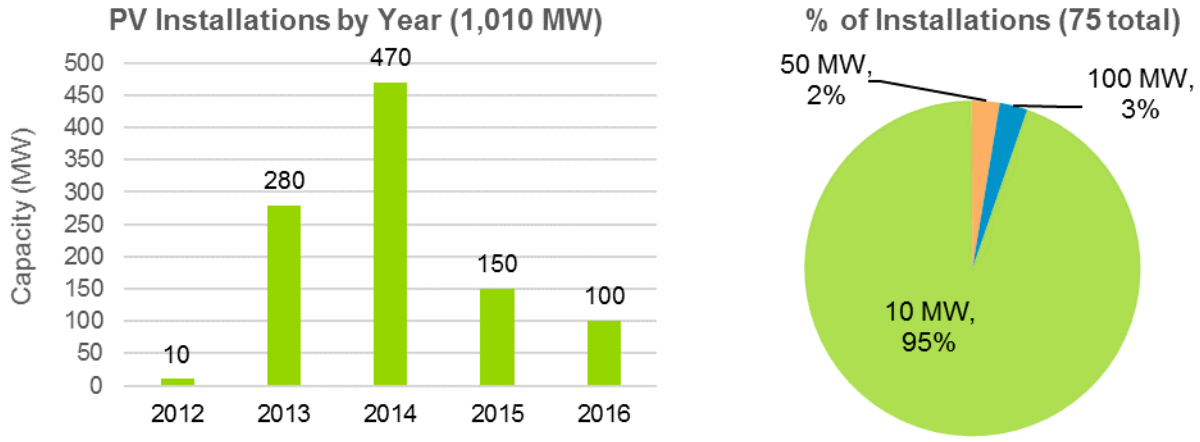
#### *2.1.4.3 Solar*

The following is the profile of Ontario's solar fleet as of year-end 2016 (of systems 10 MW or greater):

- Number of Plants and MW. There were a total of 75 solar ground-mounted systems (10 MW or greater) in operation in Ontario with a total capacity of 1,010 MW.
- Age Distribution. The left side of Figure 2-11 below shows the introduction of solar capacity over time starting in 2012. The year 2014 saw the highest capacity and number of installations. The average age of the fleet is 3.3 years.

- Size Distribution. As shown in the right side of Figure 2-11 below, the most common solar system size in Ontario is 10 MW, which was the cap for projects under the Feed-in Tariff program, except for the Samsung projects which are 100 MWs in size, and some of the Large Renewable Procurement projects.

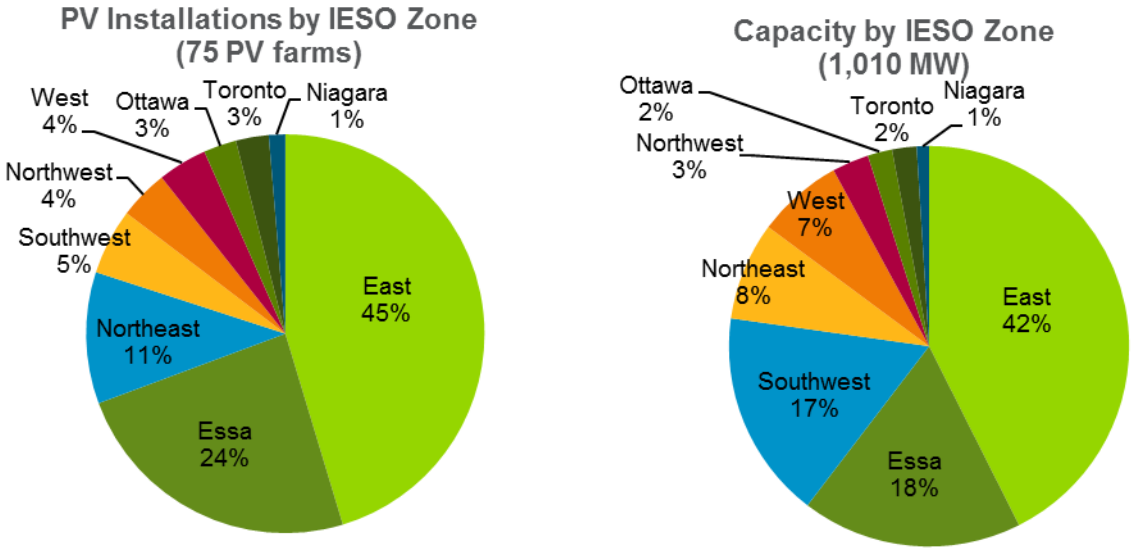
**Figure 2-11 Age and Size Distribution of Ontario Solar Systems 10 MW or greater**




*Source: Navigant Analysis*

- Location. The number of installations are presented on the left side of Figure 2-12 below, and the total capacity on the right distributed across the transmission zones (as defined by Ontario's Independent Electricity System Operator). As shown in Figure 2-12 below, 45% of the operating solar systems in Ontario are in the East zone, which hosts 42% of the installed capacity. This large share is driven by available land, available transmission capacity and proximity to the load centres. Only 5% of operating solar systems are in the Southwest zone, but that represents 17% of the installed capacity due to larger system sizes in that region.

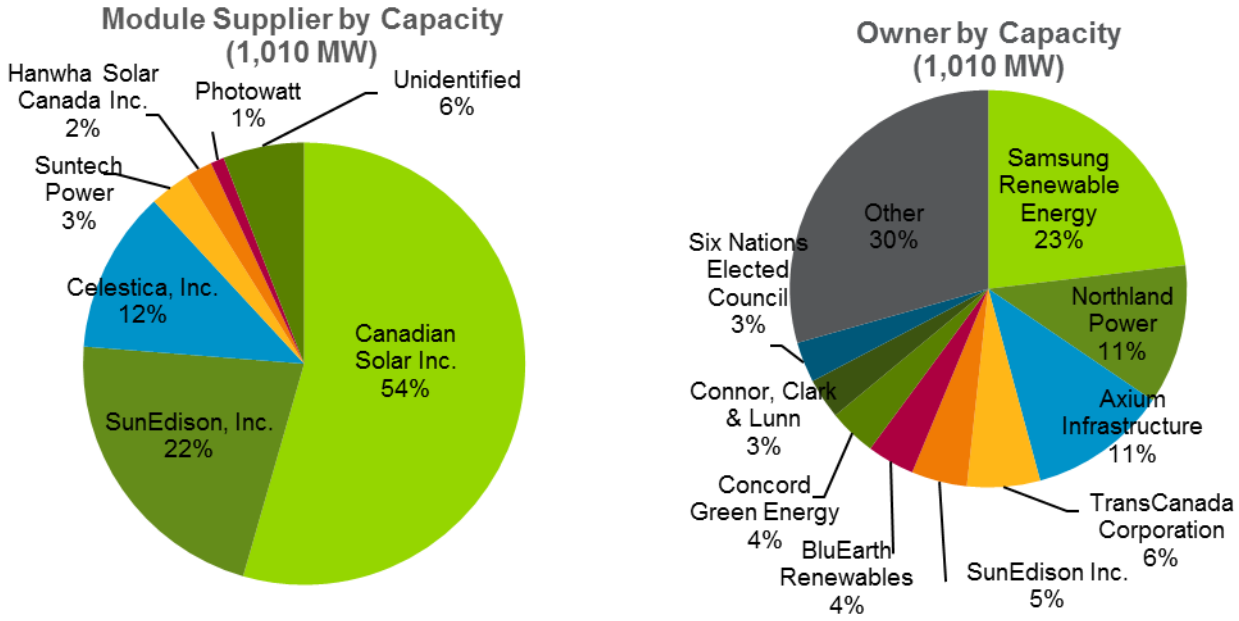
**Figure 2-12 Location of Ontario Solar Systems 10 MW or greater**




*Source: Navigant Analysis*

- Photovoltaic Module Supplier Market Share. As shown on the left side of Figure 2-13 below, the module market in Ontario is relatively concentrated, with 54% of the market controlled by the top supplier, Canadian Solar. 22% percent of the market has SunEdison panels (SunEdison filed for bankruptcy protection in the US in April 2016 and the company's Canadian unit filed for bankruptcy in October 2016). Other suppliers include Celestica (which is shutting down their solar manufacturing division in 2017), Suntech Power, Hanwha, and Photowatt.
- Solar System Owner Market Share. The right side of Figure 2-13 below shows the 10 owners with the highest solar operating capacity in Ontario. Samsung owns the largest portion of the operating fleet at 23%. Northland Power and Axium Infrastructure own the second and third largest in terms of capacity respectively.

**Figure 2-13 PV Module Supplier OEMs and Owners of Ontario Solar Systems 10 MW or greater**




*Source: SNL, ABB Energy Velocity, Navigant Analysis*

- Net Capacity Factor. The average net capacity factor of the operating solar fleet in Ontario according to data from Ontario's Independent Elctricity System Operator is 16.3% (based on MW-AC). The relatively high capacity factor in the past three years is due to a higher overbuild ratio (on the range of 20% to 40%, the latter in more recent years), driven by the drop in panel prices. The capacity factor for new solar installations can be increased via higher DC-AC oversizing or introduction of axis tracker technology.

**Table 2-1 Average Capacity Factor of Ontario's Operating Solar Fleet**

| Year | Capacity Factor (based on MW-AC) |
|---|---|
| 2014 | 15.4% |
| 2015 | 17.4% |
| 2016 | 16.0% |
| **Average** | **16.3%** |

*Source: IESO*

- System Condition. As most operating systems are under five years old, key components have not experienced much degradation, if any at all.
- Operations and Maintenance Practices. Preventative and reactive maintenance for ground-mounted solar systems usually includes panel cleaning, snow removal, lawn mowing and periodic verification of wiring and support integrity. Operations and maintenance costs are only projected to increase with escalation in labour and other material costs. Inverter replacement requires additional costs and is usually offered by the inverter manufacturer. Standard warranties are five to 10 years, with options to purchase extended warranties upfront (e.g., 20-year extended warranty).

Some companies that provide operations and maintenance services for utility-scale solar systems in Ontario include SMA, First Solar, Inc., SunEdison, NextEra Energy Canada ULC, SunPower, Canadian Solar, Inc., Enfinity, Northland Power, Inc., and EDF Renewable Energy, Inc.

Given the age, operating conditions, and standard maintenance practices of most of Ontario's existing solar fleet, Navigant estimates that the solar assets have a dependable life of 25 years.

### *2.1.5 Component Failure Rates and Operating Life*

#### *2.1.5.1 Natural Gas*

The generation performance and failure rate data of natural gas-fired plants is not publicly available and is generally held confidential by plant owners. It is reasonable to assume that performance and failure rates for Ontario plants will be like those of plants in Navigant's Generation Knowledge Services (GKS) database. The GKS database contains a broad and growing user and unit mix and currently has over 2,400 generating units representing over 527 GW of capacity, of which over 135 GW consists of simple cycle combustion turbines and combined cycle combustion turbine units.

The following metrics were used in evaluating the Equivalent Availability Factor (EAF) and Equivalent Forced Outage Rate (EFOR), which are reasonable estimates of the performance of Ontario's gas fleet:

$$EAF = \left( \frac{AH - (EUNDH + ESDH)}{PH} \right) \times 100$$

EAF = Equivalent Availability Factor
AH = Available Hours
EUNDH = Equivalent Unit Derated Hours
ESDH = Equivalent Seasonal Derated Hours
PH = Period Hours

$$EFOR = \left( \frac{FOH + EFDH}{SH + FOH + ERSFDH} \right) \times 100$$

EFOR = Equivalent Forced Outage Rate
FOH = Forced Outage Hours

EFDH = Equivalent Forced Derated Hours
SH = Service Hours
FOH = Forced Outage Hours
ERSFDH = Equivalent Reserve Shutdown Forced Derated Hours

Based on the operating data for the Ontario gas-fired fleet, a peer group was developed that would be representative of the Ontario units, which was combined cycle units that were between 150 and 1,000 MW with a net capacity factor of between 10 to 40%. From that database, the median for units were as listed in Table 2-2 below.

**Table 2-2 NCF, EAF and EFOR for Ontario Wind Fleet**

| | NCF | EAF | EFOR |
|---|---|---|---|
| Median | 26.16% | 83.94% | 4.11% |

*Source: Navigant*

The largest contributor to the EFOR rate was the steam turbine, which caused 11,688 forced outage hours, followed by the combustion turbines with 6,243 hours and the balance of plant (BOP) with 4291 hours. The combustion turbines and BOP contributed to a larger number of events, however (these tended to be of shorter duration than steam turbine events). This is demonstrated in Table 2-3 below.

**Table 2-3 Breakdown of EFOR for Ontario Gas Fleet**

| Component | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| Boiler | 758 | 3% | 74 | 9% |
| Steam Generator | 11,688 | 47% | 142 | 17% |
| Generator | 944 | 4% | 53 | 6% |
| Balance of Plant | 4,291 | 17% | 194 | 23% |
| Combustion Turbine | 6,243 | 25% | 284 | 33% |
| Other | 1,179 | 5% | 110 | 13% |

*Source: Navigant*

The highest number of steam turbine forced outage hours were due to events on the low-pressure turbine at 5,742 hours and the high-pressure turbine at 1,197 hours. This is due to the time required for system cool down and to remove and reinstall casings. The control system had the largest number of events (49) but only contributed to a few forced outage hours (256), as control system issues are normally very fast to resolve. A summary of the causes of forced outages due to the steam turbine is provided in Table 2-4.

**Table 2-4 Breakdown of EFOR for Ontario Steam Turbines**

| Steam Turbine | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| High Pressure Turbine | 1,197 | 14% | 10 | 7% |
| Low Pressure Turbine | 5,742 | 69% | 21 | 15% |
| Valves | 50 | 1% | 24 | 17% |
| Lube Oil | 8 | 0% | 8 | 6% |
| Controls | 256 | 3% | 49 | 35% |
| Miscellaneous (Steam Turbine) | 1,012 | 12% | 29 | 21% |

*Source: Navigant*

The combustion turbine outages were driven by issues with the fuel and combustion system (2,634 hours over 120 events), as demonstrated in Table 2-5 below. This was principally due to dry low NOx combustion system issues and component failures.

**Table 2-5 Breakdown of EFOR for Ontario Combustion Turbines**

| Combustion Turbine Component | Total Hours | Percentage | Total Number of Events | Percentage |
|---|---|---|---|---|
| Inlet Air System and Compressors | 1,907 | 31% | 27 | 11% |
| Fuel, Ignition and Combustion System | 2,634 | 42% | 120 | 49% |
| Turbine | 426 | 7% | 12 | 5% |
| Exhaust System | 65 | 1% | 16 | 7% |
| Auxiliary | 152 | 2% | 1 | 0% |
| Miscellaneous (Gas Turbine) | 1,019 | 16% | 69 | 28% |

*Source: Navigant*

Balance of plant issues contributed to 17% of the total outage hours. The largest number were caused by issues with the electrical system (2,068 hours over 55 events). Issues with the condensate system and feed water systems were also important as shown in Table 2-6 below.

**Table 2-6 Breakdown of Balance of Plant EFOR for Ontario Gas Fleet**

| Balance of Plant | Hours | Percentage | Events | Percentage |
|---|---|---|---|---|
| Condensing System | 418 | 10% | 29 | 15% |
| Circulating Water System | 43 | 1% | 5 | 3% |
| Condensate System | 953 | 22% | 18 | 9% |
| Feedwater System | 554 | 13% | 45 | 23% |
| Electrical | 2,068 | 48% | 55 | 28% |
| Auxiliary System | 171 | 4% | 21 | 11% |
| Miscellaneous (Balance of Plant) | 84 | 2% | 21 | 11% |

*Source: Navigant*

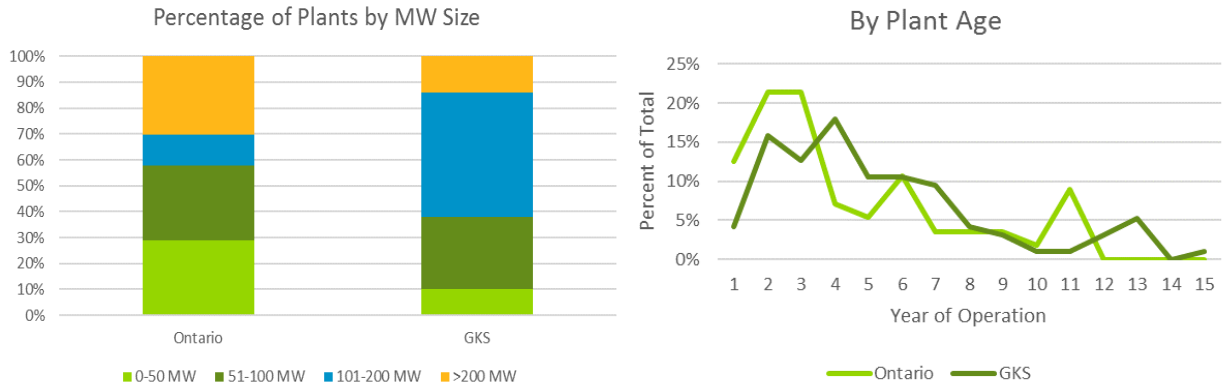
The heat recovery boilers and generators only accounted for a total of 7% of all outage hours with the generator accounting for 944 outage hours and the boiler accounted for 758 hours. The largest driver on the heat recovery boiler was tube leaks, while the generator was driven by a combination of cooling system and exciter issues.

While component failure rates increase with the age and use of natural gas plants, and heat rate degradation will tend to make the plants less completive in energy markets over time, plants following the proper maintenance and replacement regimes as outlined in section 2.1.1 should be able to continue operating over their forty-year expected life with acceptable outage rates.

#### *2.1.5.2 Wind*

Wind plant performance and failure rate data is not publicly available and is generally held confidential by plant owners. However, it is reasonable to assume that Ontario wind plants will have performance and failure rates similar to those of wind plants in Navigant's Generation Knowledge Service (GKS) wind database (Ontario has a slightly newer fleet, and fewer mid-size plants than the GKS averages, but they are similar overall). The GKS wind database includes data from approximately 8 GW of capacity from a variety of turbine models, plant sizes, ages, and operations and maintenance contract types. The vast majority, 95%, of the MW capacity in Navigant's GKS database is in North America. Figure 2-14 shows the database distribution by plant size and age, which is similar to the size and age distribution of Ontario's wind fleet.

**Figure 2-14 Plant Size and Age Distribution in GKS Wind Database**




*Source: Navigant GKS Wind Database*

The following are median values of selected performance metrics in the GKS wind database, which are reasonable estimates of performance of the Ontario wind fleet:

- Availability. The most common measure of availability used in the wind industry is equipment equivalent availability factor (EEAF). EEAF does not penalize the plant for hours when there is no wind. Median EEAF = 95.6%.

$$EEAF = \frac{[PDTH - (FTH + MTH + PTH)]}{PDTH} \times 100$$

  - PDTH = Period Turbine-Hours = (total hours in the period) *(number of turbines)
  - FTH = Forced Turbine-Hours = (forced outage hours per turbine) *(number of turbines)
  - MTH = Maintenance Turbine-Hours = (maintenance outage hours per turbine) *(number of turbines)
  - PTH = Planned Turbine-Hours = (planned outage hours per turbine) *(number of turbines)

- Forced Outage Rate. The most common measure of forced outage rate used in the wind industry is equipment equivalent forced outage rate (EEFOR). Median EEFOR = 2.7%.

$$EEFOR = \frac{FTH}{(CTH + FTH + RUTH)} \times 100$$

  - CTH = Contact Turbine-Hours
  - RUTH = Resource Unavailable Turbine-Hours

- Major Failures. Navigant defines major failures as events which either (a) require a crane to repair or replace a system or (b) require the replacement of a major component within a system, resulting in a cost greater than 5% of the installed cost of the turbine. Table 2-7 below is a summary of average major failure rates in the GKS wind database, both for the most recent benchmark year (2015) and the cumulative rate for the life of the plant. Also, shown in the far-

right column of Table 2-7 below are industry average failure rates as reported in a 2013 United States National Renewable Energy Laboratory (NREL) study.[1]

- 2015 Major Failure Rate = (# of Major Failures in 2015) / (# units)
- Cumulative Major Failure Rate = (# of Major Failures through 2015) / (# units) / (years since COD)

**Table 2-7 Major Failure Rates by System**

| System | 2015 Major Failure Rate | Cumulative Major Failure Rate | Industry Average Failure Rate |
|---|---|---|---|
| Blade | 0.2% | 0.5% | 0.67% |
| Gearbox | 1.1% | 1.3% | 5.0% |
| Generator | 2.1% | 2.1% | 3.5% |
| Main Bearing | 0.6% | 0.5% | 2.0% |
| Generator Bearing | 0.3% | 0.4% | n/a |
| Transformer | 0.1% | 0.04% | n/a |

*Source: Navigant GKS Wind Database, NREL*

While component failure rates do increase with age, the plants continue to maintain acceptable operating profiles over the course of their identified useful life (albeit with capacity factor degradation and operations and maintenance cost escalation). Beyond the identified useful life, the plants would see accelerated component failures which eventually make continued operation untenable (see section 3.1.1.2).

#### *2.1.5.3 Solar*

The operating life of solar systems is usually monitored by the system owner. In the solar industry, the rate at which the system is fully functioning (and available to generate power) expressed as a function of the total time considered, is referred to as the availability rate. For solar, the availability rate is relatively high, approximately 98% to 99%[2], compared to other technologies. This is because components are connected in strings, meaning that should something fail, only a single string or portion of the system will experience an outage, while the rest of the system continues to generate power. It is unlikely for all to fail at once.

- Panels most often experience an outage or failure due to coverage (snow, soiling, or other shading) or a wiring fault. However, the way panels are connected electrically, when one stops generating power, the others continue.
- Inverters for utility-scale systems are usually 1 MW. For a 10 MW system, the typical design is ten (10) 1 MW inverters. This means that if an inverter fails, only one-tenth of the system would power down. Inverters typically last 10-12 years, but it is possible that an outage can occur sooner than that.
- Racking systems are typically tested and rated to handle expected snow and wind loads plus a factor of safety. Therefore, the warranty from the manufacturer covers damage from these occurrences. Should the structural integrity of the racking system be compromised, it is again

[1] NREL, Lantz, E., Operations Expenditures: Historical Trends and Continuing Challenges, 2013

[2] DBRS reported that the independent engineer for the 100 MW (AC) Kingston Solar project assumed inverter availability of 99%.

likely that only the module(s) related to one string would need to be taken offline to repair, not the whole solar system.
- Wiring is required to be protected up to codes and standards to limit the potential for damages.

Overall, it is unlikely that the component failure rates would cause an unacceptable operating profile for the solar fleet over a 25-year operating lifespan.

## 2.2 Leasing, Regulatory, and Contract Issues

### *2.2.1 Leasing Structure*

When constructing a natural gas-fired power station it is typical for the owner to purchase the land that is used for the site. All the natural gas-fired plant owners that Navigant could interview owned the site land; therefore, no leasing issues were identified that would adversely impact the expected useful life of 40 years.

The terms of land leases for wind plants vary. The minimum length is 20 years, but up to 50 year leases are not unusual. In most cases, there will be an option for the plant owners to extend the lease for an additional 15 years or more. Leases are contracts between the plant owners and landowners, and they are generally written to be more favourable to the plant owners. For example, plant owners can typically construct, erect, use, install, reinstall, replace, relocate, maintain, and remove equipment from time to time, without limitation. No approvals to modify or extend leases are needed by local jurisdictions, community, or aboriginal partners, unless they have such approval rights due to having partial ownership in the wind plant. Navigant did not identify any leasing issues that would adversely impact the expected useful life of 25 years for wind assets or any further investments to extend asset life beyond 25 years.

Most solar farms larger than 10 MW are sited on farmland and have a minimum 20-year lease. Some may go as high as 50 years and/or there might be options to extend the lease. Counterparties include private landowners, First Nations, and municipalities. Leases usually have two cost components as follows: (1) a fixed component and (2) a variable component where the variable component is equal to a percentage of revenue generated from the asset (e.g., 3%). No leases require third party approvals such as local jurisdictions, community, or aboriginal partners, unless those parties are partial owners in the project. Navigant did not identify any leasing issues that would adversely impact the expected useful life of 25 years for solar assets or any further investments to extend life beyond 25 years.

### *2.2.2 Regulatory Issues*

No regulatory issues were identified that would adversely impact the expected useful life of natural gas, wind and solar plants of 40 years, 25 years and 25 years respectively.

For partial repowering of wind plants (replacing the drive train and rotor with similar size components), regulatory approvals would generally not be required. The noise profile of the new turbine will generally be less (quieter) than the original turbine and therefore would not need to be remodelled. The rotor diameter will typically be the same as the original in a partial repowering, so a revised permit for increased tip height generally will not be needed. One wind plant owner reported having a permit from the municipality that includes a road allowance for the distribution lines. The city can impose reasonable conditions but cannot generally deny an extension of the permit.

Regulatory approvals would likely be required for full repowering of wind plants (replacing the turbines with larger components). Existing building and operating permits would generally not cover the significant construction work and changes in plant configuration that is associated with full repowering. However, repowering could offer the possibility for expedited permitting because development is occurring at a previously permitted site and these sites have a much longer record of accomplishment of historical environmental data. Existing plants also tend to have increased local familiarity, which might also facilitate the permitting process. On the other hand, if endangered species are found to be in the proximity or other environmental damage has occurred, permitting would likely be more complex and drawn out, or local siting requirements may become more stringent over time.

While some regulatory approvals are required to repower wind assets to extend their life beyond 25 years, Navigant does not believe that they pose insurmountable risks to such investments. Navigant did not identify any regulatory issues that would adversely impact repowering for natural gas and solar plants to extend their useful life beyond 40 years and 25 years respectively.

# 3. COST OF LIFETIME EXTENSION AND REPOWERING

This section outlines the costs of lifetime extension that would be borne by ratepayers. After considering the various options available, Navigant determined that a full repowering of the wind and solar fleet after 25 years of operation, and partial repowering as needed for the natural gas fleet as the most cost-effective repowering options.

## 3.1 Repowering and Extension Options

### *3.1.1 Life Cycle of Plants under Normal Operations and Maintenance*

#### *3.1.1.1 Natural Gas*

As discussed previously, a combustion turbine power plant can operate for at least 40 years if the owner follows prudent operating practices and recommended outage schedules for the combustion turbine, generator, steam turbine and heat recovery boiler. In general, the operations and maintenance for natural gas-fired plants will increase with the escalation terms within the service contracts for the associated equipment.

Combustion turbine outages are driven by the hot section and combustion components. Manufactures have improved this technology so outages are now not required until either 24,000 factored fired hours or 900 factored starts are reached. When the hot section components are removed, they can be repaired from two to four times depending on the component and the manufacture's recommendations.

Electrical generators and steam turbines are generally linked to scheduled inspection intervals of six years or 48,000 operating hours. Following best practices, owners and operators have managed to extend those intervals to between 10-12 years or 80,000 to 96,000 operating hours.

Heat recovery steam generators with proper maintenance have operated for 15-20 years without major capex being spent. Replacement parts are most commonly needed in the heat-affected zones of the super-heaters or the high flow areas of the economizers.

Maintenance spending increases with the number of starts of a combined cycle power plant. As discussed earlier, units are now designed for 150-250 starts per year. This spending is normally associated with balance of plant equipment and does not materially impact the overall cost of operations.

Depending on the operating profile of the facility, reliable operations after 20 years would most likely require capital expenditures for the heat recovery steam generators, electrical generators, steam turbines and combustion turbines. If no investments are made it would be expected that the units would suffer from forced outages and decreased availability.

Section 3.1.2.1 discusses the repowering costs associated with natural gas plants and evaluates them against their benefits to determine the most cost effective option at the end of life.

#### *3.1.1.2 Wind*

As previously discussed, the physical lifetime of a wind plant is generally considered to be 25 years. Historically an assumption of 20 years was used in analyses to match the financial life, but an increasing

number of plant owners are using 25 years due to technological advancements that have led to improvements in plant reliability and longevity.

If a wind plant were to continue to be operated beyond the physical lifetime without significant investment, operations and maintenance costs would increase at an accelerated rate and availability would drop at an accelerated rate as wind plants generally have a capacity factor degradation of about 1.6% per year making this option less attractive financially. Ultimately the plant owners will conclude that operating the plant as is has less value than other options such as full repowering, partial repowering, and decommissioning, which are discussed further in Section 3.1.2.2.

#### *3.1.1.3 Solar*

As previously discussed, the physical lifetime of a ground-mounted solar photovoltaic system is 25 years. The modules and racking typically come with 10-year product warranty (defects in materials and workmanship) and a 25-year performance warranty. Inverters typically have a 10-year product warranty and last 10-12 years. Wiring typically lasts 10-12 years. Therefore, inverters and wiring would need to be replaced at least once on average over a 25-year lifetime.

If a solar system was to continue to be operated beyond the physical lifetime without significant investment, operations and maintenance costs would remain the same, only increasing with inflation and the price of any material costs involved in maintenance. Replacement of inverters and wiring are separate from general operations and maintenance and would require minimal investment. Inverters do typically fail after year 10 so most installers opt into an extended warranty where available, which is an upfront cost at the time of installation. With the standard warranty the cost of the inverter would just be incurred later, at the time of the replacement.

Photovoltaic modules, and therefore, systems, are projected to degrade by 0.5% each year, which is usually how the capacity factor and system performance is forecasted at the time of installation. The capacity factor of the system can be determined based on the number of years since the components were replaced. If a solar system operated beyond the useful life of 25 years, the capacity factor of year 26 would be that much lower than if a whole new system were installed in its place. Section 0 discusses evaluates the costs and benefits associated with options available at the end of life such as full repowering, partial repowering, and decommissioning.

### *3.1.2 Cost of Repowering for Lifetime Extension*

#### *3.1.2.1 Natural Gas*

As discussed above the limiting factor on the combustion turbine would be the turbine rotor that requires a major inspection and potential replacement of turbine wheel at 200,000 factored hours or 5,000 factored starts. The rotor must be removed and sent to a qualified repair shop for disassembly, inspection and repair and/or replacement of the rotor disks. In addition, there would likely be requirements for replacement of super-heater or economizer sections of the heat recovery steam generators.

The costs for the turbine life extension would be in the range of CAD$16M for the inspection and repair/replacement of hot section components. The other work required on the heat recovery steam generators would be in the range of CAD$4M.

The balance of plant equipment would normally be covered during the routine maintenance at the facility. This would include the rebuilding or replacement of pumps, including the boiler feed pumps, and the repair and replacement of motors. It would also include the replacement of any catalysts that are required for emissions control. Steam turbines and electrical generators should be able to operate for the life of the plant with routine inspections and maintenance, assuming there are no incidents with the equipment.

The total repowering costs of a natural gas plant is approximately $20M which is a fraction of the cost of shuttering the plant and building a new one to replace the capacity. According the U.S. Energy Information Administration,[3] the cost of a new natural gas combustion turbine is $1,100/kW meaning that a 100 MW plant would cost $110M. Hence, a partial repowering as needed for gas plants is the most cost efficient option when the asset reaches end of life.

#### *3.1.2.2 Wind*

Wind plant owners generally have three options when a plant reaches the end of its useful life.

- *Full repowering*, which is defined as the complete dismantling and replacement of turbine equipment, including the tower and foundation. With full repowering, some of the existing project infrastructure (e.g., roads, buildings, and interconnection equipment) is assumed to be utilized in the new project. There is also the potential to offset repowering costs by recycling or selling the older equipment.
- *Partial repowering*, which is defined as installing a new similar sized drivetrain and rotor on an existing tower. Some peripheral components, such as the power convertors and electronics, may also be replaced. Partial repowering allows existing wind power projects to be updated with equipment that increases energy production, reduces machine loads, increases grid service capabilities, and improves project reliability.
- *Decommissioning*, when the plant is fully disassembled and the land is returned to its original use. The equipment is sold for reuse or scrapped.

Repowering (either full or partial) is a major undertaking that requires substantial capital investment and planning, similar to the development of the original facility. The major benefits of repowering are increased plant availability, the return of operations and maintenance costs to normal levels, and an extended plant lifetime. Performance improvements associated with partial repowering are assumed to be less than under full repowering but greater than the original design of the machine.

Navigant's costs of repowering were developed from a case study of a wind plant with the following characteristics of an average wind plant in the current Ontario fleet:

- 40 Siemens 2.3 MW WTGs, with a total plant capacity of 92 MW;
- Commercial Operation Date and Year 1 of operations in 2015;

Three scenarios were considered:

- decommissioning the plant after 25 years of operation in 2040;
- full repowering after 25 years in 2040, followed by decommissioning after an additional 25 years in 2065.

[3] Capital Cost Estimates for Utility Scale Electricity Generating Plants, Released November 2016 – Table 1. Updated estimates of power plant capital and operating costs https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capcost_assumption.pdf

- partial repowering after 25 years in 2040, followed by decommissioning after an additional 25 years in 2065.

Table 3-1 summarizes the key assumptions of the case study. Capital and operations and maintenance cost assumptions are from a 2013 NREL repowering study,[4] escalated to 2017 USD at 2.5% per year and converted to CAD at a rate of 1.35 CAD = 1 USD. All operations and maintenance costs were converted to fixed operations and maintenance for modelling purposes. Fully repowered plants are assumed to have slightly lower (5%) total installed capital costs because of the ability to reuse or repurpose existing equipment. Partial repowering is estimated to result in an approximately 15% lower capital cost because of reusing existing equipment including towers and foundations. In all scenarios, it is assumed that decommissioning cost (occurring in year 26) equals the resale or scrap value of the components (i.e., net zero cost).

Net capacity factor assumptions are based on projections from NREL's 2016 Annual Technology Baseline report, but are benchmarked to average Ontario fleet values from Ontario's Independent Electricity System Operator. Larger rotors and taller towers, along with other technological advancements, have resulted in significant increases in net capacity factors for utility-scale wind plants over the past 15 years. These advancements are expected to continue for the foreseeable future, albeit at a slower pace. Net capacity factors for this case study is assumed to be 37% for full repowering in 2040, which is a 5% improvement over the initial 32% net capacity factor in 2015, reflecting the technological advancements that are expected during this 25-year period. As defined here, partial repowering was estimated to achieve about 50% of the energy production improvements associated with full repowering.

As can be seen from Table 3-1 below, the fixed and variable operations and maintenance costs are the same in all cases. The capital costs for full repowering are slightly lower than the original plant cost and only 12% higher compared to partial repowering but deliver double the energy production improvements compared to partial repowering, as stated in the study. Hence, a full repowering at the end of the original asset life of 25 years is the most cost effective alternative.

**Table 3-1 Wind Repowering Case Study Key Assumptions and Results**

| | units | Original Plant | Full Repowering | Partial Repowering |
|---|---|---|---|---|
| Year 1 | - | 2015 | 2040 | 2040 |
| Capital cost | 2017 CAD/kW | 2,844 | 2,291 | 2,049 |
| Fixed O&M in year 1 | 2017 CAD/kW-year | 19.04 | 19.04 | 19.04 |
| Variable O&M in year 1 | 2017 CAD/MWh | 9.32 | 9.32 | 9.32 |
| O&M increase per year | %/year | 2.0% | 2.0% | 2.0% |
| NCF in year 1 | % | 32% | 37% | 34.5% |
| NCF decrease per year | %/year | 1.6% | 1.6% | 1.6% |

*Source: Navigant, NREL Wind Project Repowering*

[4] NREL, Wind Power Project Repowering: Financial Feasibility, Decision Drivers, and Supply Chain Effects, December 2013, http://www.nrel.gov/docs/fy14osti/60535.pdf

#### *3.1.2.3 Solar*

Similar to wind assets, three scenarios were considered:

- decommissioning the plant after 25 years of operation,
- full repowering after 25 years, followed by decommissioning after an additional 25 years.
- partial repowering after 25 years, followed by decommissioning after an additional 25 years in 2065.

Table 3-2 summarizes the key assumptions related to life extension of solar plants.

**Table 3-2 Solar Repowering Case Study Key Assumptions and Results**

| | units | Original Plant | Full Repowering | Partial Repowering |
|---|---|---|---|---|
| Year 1 | - | 2017 | 2042 | |
| Capital cost | $/W-DC | $1.80 | $0.95 | |
| PV Module Cost | $/W-DC | $0.54 | $0.24 | |
| Fixed O&M | $/kW-DC | $27 | $27 | $27 |
| O&M increase per year (Inflation) | %/year | 2% | 2% | 2% |
| Capacity Factor (based on MW-AC) | % | 16.3% | 16.3% | 16.3% |
| Capacity Factor decrease per year | %/year | 0.5% | 0.5% | 0.5% |

*Source: Navigant*

As mentioned in Section 3.1.1.3, to extend the life cycle of a ground-mounted solar photovoltaic system the major pieces of equipment that would need to be replaced are the inverters and the wiring. These two components have a technical lifetime of 10-12 years and so they are replaced at least once in a 25-year lifetime. The expected operating life after replacement of the inverters and wiring would be another 10-12 years.

Attention should also be paid to the lifetime and replacement cost of the solar photovoltaic modules. Panel technology is improving at a much faster rate than other renewable technologies, such as wind, and other key solar components such as racking and inverters. In parallel, module prices have significantly dropped over the past 10 years and are projected to continue to decrease for the next 10 years. If modules are replaced 25 years from now, they may have a much higher efficiency and much lower costs than what exists today. Replacing panels would extend the life of the system an additional 25 years, or perhaps longer based on the technical lifetime of panels at the time. The capacity factor in Table 3-2 is consistent across the full and partial repowering alternatives. While panel efficiency will continue to increase over time, it will not impact capacity factor (it does impact power density). Capacity factor is increased by using tracker technology, but for this analysis, we assume a constant split between fixed tilt and tracker in both 2017 and 2038. By contrast, wind farms have could increase capacity factor by increasing the hub heights to reach better wind regimes.

Due to technological improvements, the capital cost for a full repowering is about half that of the original plant and could potentially have a useful life that is greater than 25 years making it the most cost effective option.

## 3.2 Leasing, Regulatory, and Other Costs

The owners of natural gas-fired facilities would have to renegotiate new contracts for repair and replacement of combustion turbine parts. This may result in cost savings as there have been third party entrants into the parts supply and repair markets.

Leasing, regulatory, and other development costs are low relative to the total capital expenditures associated with modern wind facilities. These costs are generally assumed to be the same as those required for a greenfield development wind project.

Since the technical lifespan of solar photovoltaic systems, specifically the modules, is expected to exceed a 20-year power purchase agreement, some owners expect the system to run for an additional 5-10 years beyond the PPA and original lease. However, plans to extend the land lease are typically not put in place until closer to the end of the power purchase agreement term, as refinancing the lease early could result in penalties.

At the time of the installation of a solar system, there is usually a budget set aside for decommissioning. If the system were to be decommissioned later than originally intended, there would be no extra costs, and the original budget should cover decommission at year 25 or 30.

In summary, no significant costs for leasing, regulatory or other developmental costs were identified that would adversely impact repowering decisions.

# 4. REFERENCES

1. NREL, Wind Power Project Repowering: Financial Feasibility, Decision Drivers, and Supply Chain Effects, December 2013, http://www.nrel.gov/docs/fy14osti/60535.pdf
2. NREL 2016 Annual Technology Baseline, November 2016
3. SNL
4. http://www.powermag.com/wind-turbine-repowering-horizon/
5. http://www.aweablog.org/repowering-gives-new-life-to-old-wind-sites/
6. NREL, Lantz, E., Operations Expenditures: Historical Trends and Continuing Challenges, 2013
7. NREL, Tegen, S.; Hand, M.; Maples, B.; Lantz, E.; Schwabe, P.; Smith, A. (April 2012). 2010 Cost of Wind Energy Review.

## Veinot, Cindy (TBS)

**From:** Veinot, Cindy (TBS)
**Sent:** February 1, 2017 7:02 PM
**To:** Hume, Steen (ENERGY); 'Picard, Michel'; 'Ouellette, Lois A'; Petsche, Nadine (TBS)
**Cc:** Hosick, Sarah (TBS)
**Subject:** Meeting tomorrow

Hi all,

A while back we dropped the idea of having the LDCs take on the responsibility of a long-term payable due to the Province because the amount collected from the LDCs will be dependent on future rates and future energy consumption.

I've been asked to think about whether this option would work if we chose a percentage of the amount to be due from the LDCs that is reflective of the "minimum known amount".

Example:

GA = 100
Amount to be deferred from the ratepayers bills = 30

Could a structure be set up so the LDCs agree to a longterm payable of a percentage of the 30 – 50% would be 15, 75% would be 22.5, etc. We would have to understand the potential for volatility in price and consumption.

This structure would be in place of a new separate stand-alone entity.

The expected fiscal impact to the Province would be the amount not billed to the LDCs – for example, if 75% were billed to the LDCs (or 22.5), then 7.5 would be the fiscal impact to the Province (assuming we could not support this amount as an asset.)

Could you give this some thought before we meet tomorrow.

Thanks all,

Cindy

Cindy Veinot
Provincial Controller and Assistant Deputy Minister, Office of the Provincial Controller
Treasury Board Secretariat
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario M7A 1Y7

T: 416-325-8017
E: cindy.veinot@ontario.ca

TBS

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

July 20, 2017

Ms. Bonnie Lysyk
Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, ON M5G 2C2

Dear Ms. Lysyk:

Thank you for the information that you presented at our Board of Directors meeting in Toronto on June 14, 2017 and your subsequent letter dated June 22, 2017 which outlines your technical position regarding rate regulated accounting and the inclusion of the market accounts on the IESO financial statements. Based on your position, you requested that the Board consider amending and reissuing its 2016 financial statements.

I can assure you on behalf of the Board that all of your comments were taken very seriously and that the points you raised were given very careful attention and reflection.

It is not the intention of the Board at this time to specifically address the technical position you have conveyed in your letter. A response to the technical position will be provided by the IESO, with support from its consultants and the KPMG audit partner, in the near future.

The Board has thoroughly reviewed the process it followed in making its decision to approve the accounting policy changes for the year ended December 31, 2016. The Board is of the opinion that it has exercised appropriate due diligence in approving the accounting policy changes as they relate to the 2016 financial statements, and to the use of regulatory accounting for the unrecovered smart metering expenses and the unrecovered PSAB transition items, as well as to the inclusion of the market accounts.

The changes made for 2016 provide increased transparency and information with regards to both material expenditures for which recovery over time has been approved and to the IESO's administration and settlement of electricity market transactions worth in excess of $17 billion annually.

Given the above, it is the Board's decision to not amend and reissue the IESO's December 31, 2016 financial statements.

Please note, however, that the Board will continue to be diligent in its monitoring of the Ontario Fair Hydro Plan transactions, its accounting treatment and the potential impact on the IESO's 2017 financial statements.

In closing, I would again like to thank you for taking the time to meet with the IESO Board of Directors last month.

Yours truly,

Tim O'Neill
Chair, Board of Directors
Independent Electricity System Operator

c: Peter Gregg, President & CEO-IESO

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

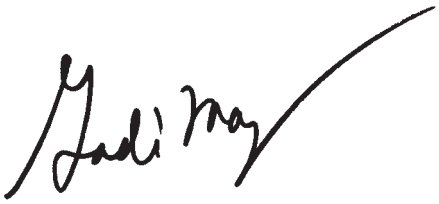
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

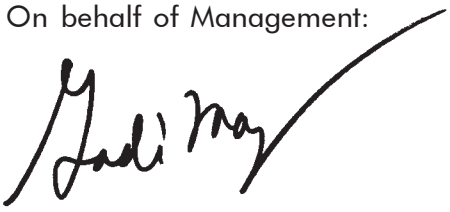
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

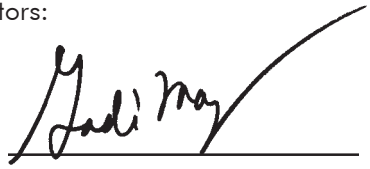
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

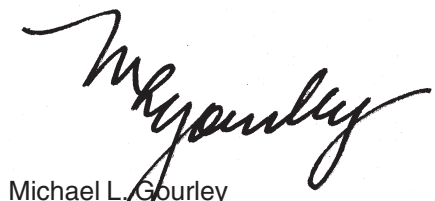
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

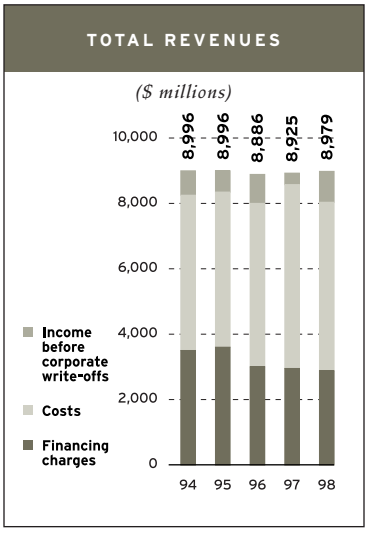
CHAIRMAN

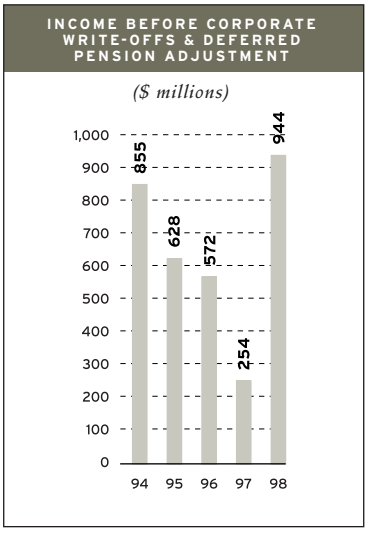
## CONTENTS

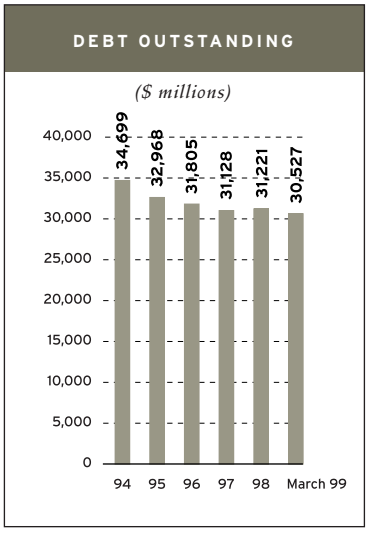

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

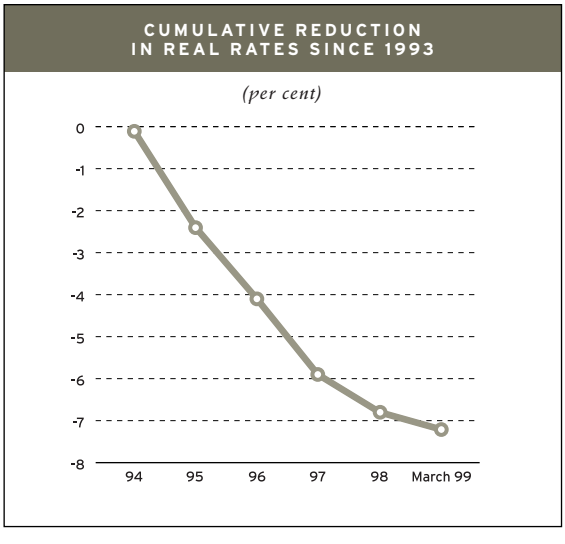
# Ending on a High Note

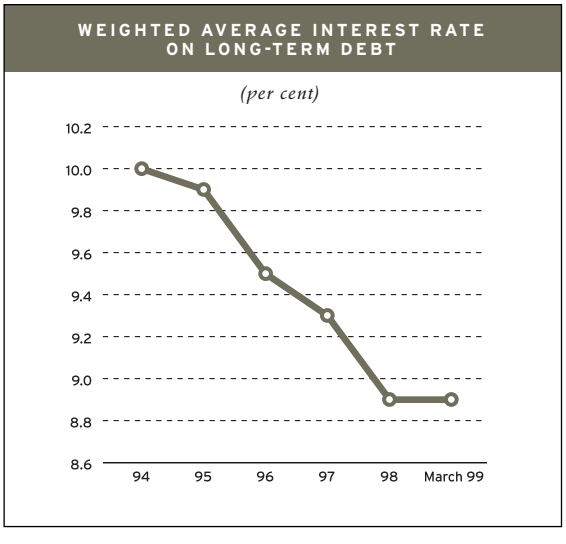
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

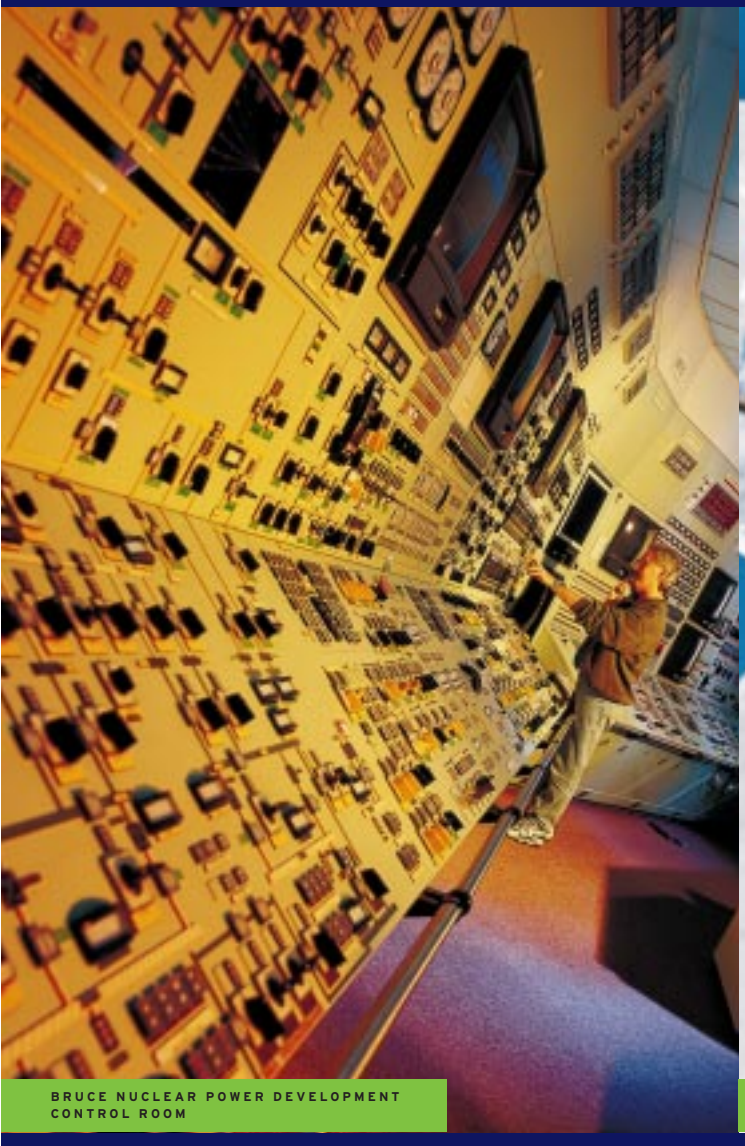
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

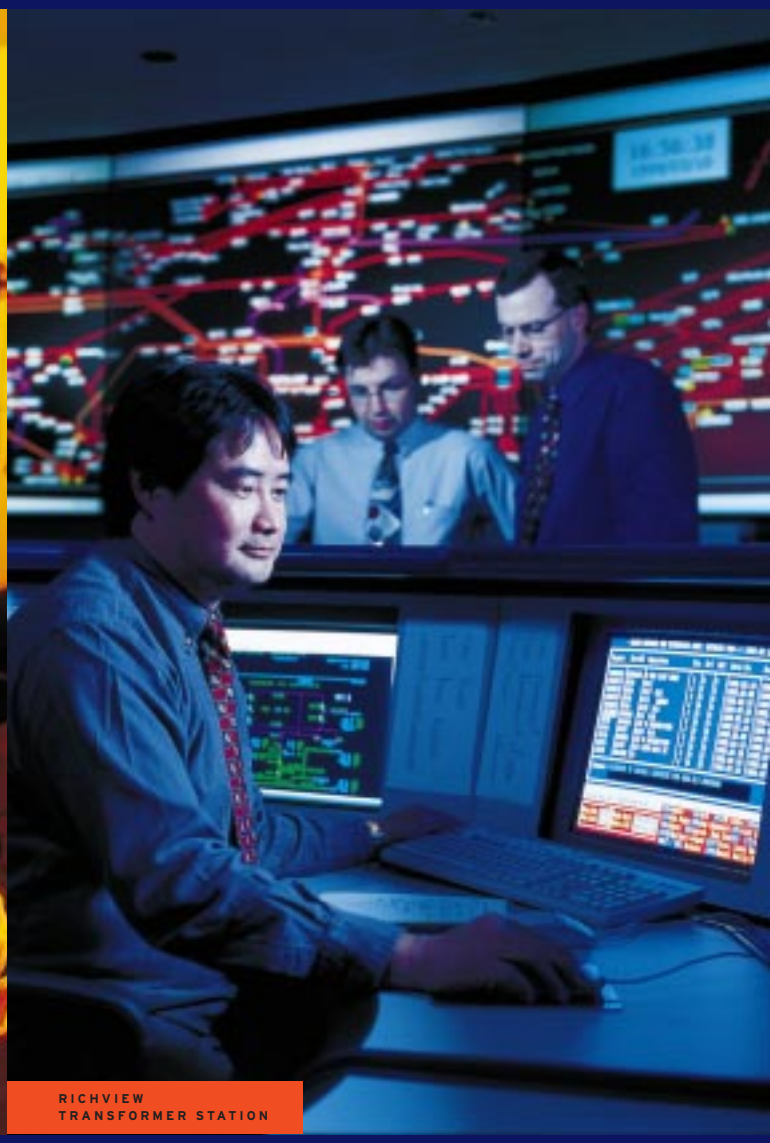
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

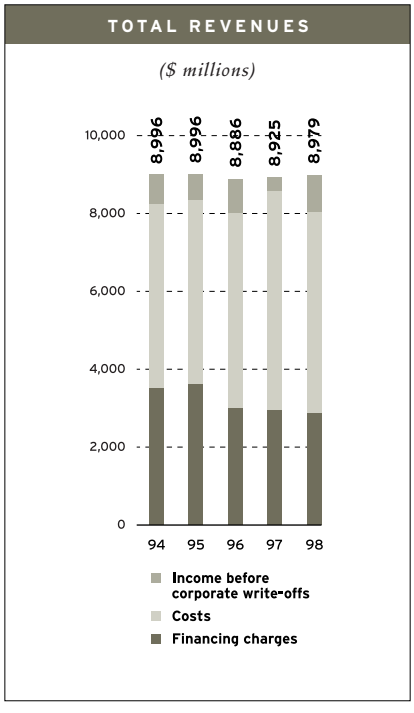
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

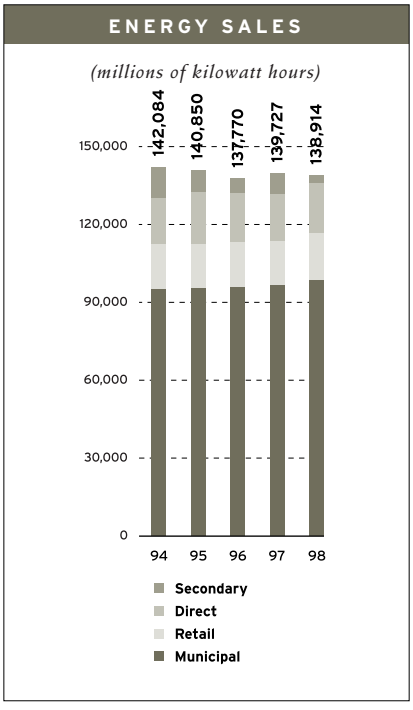
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



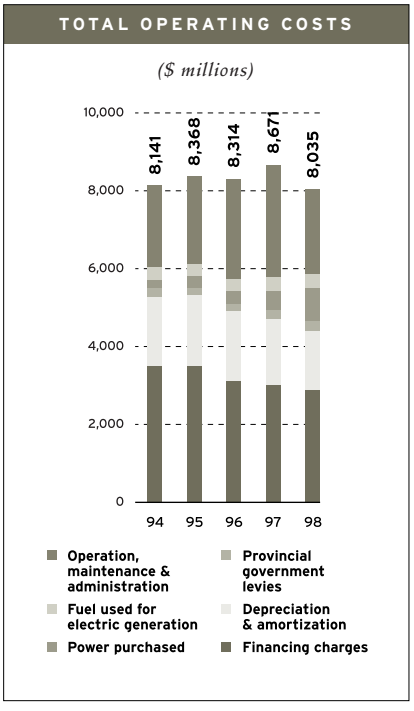

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

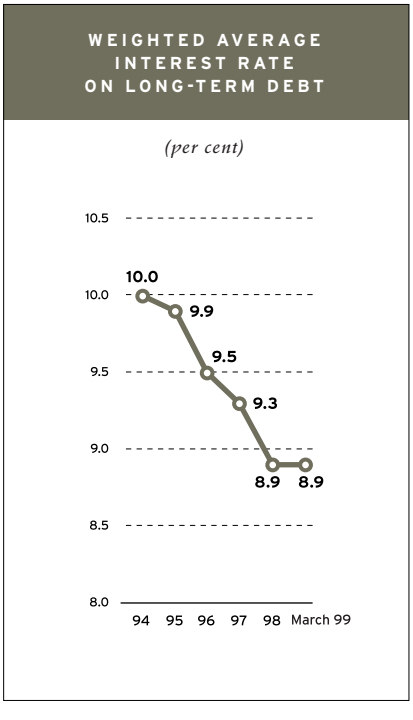
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

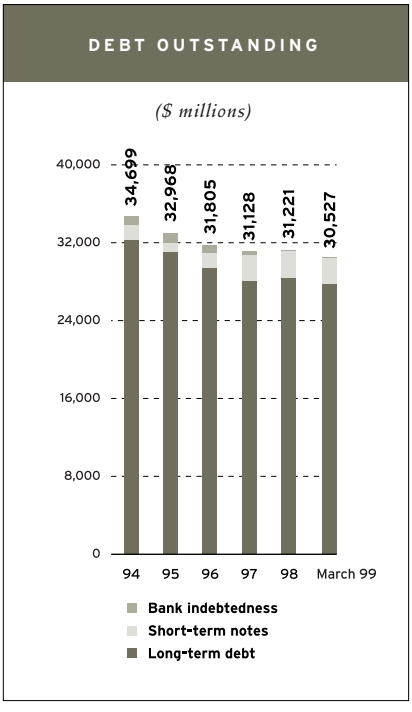
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

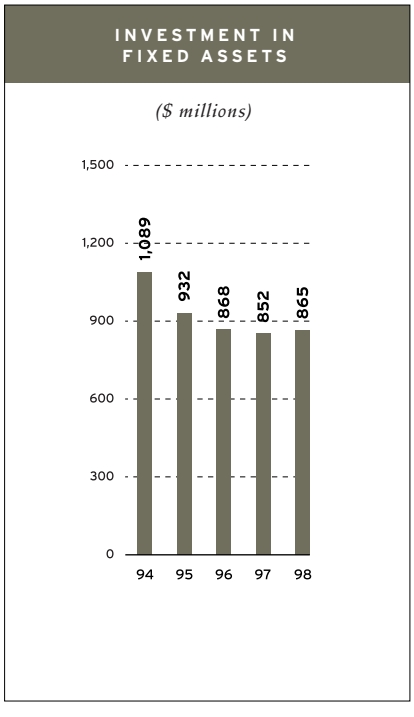
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

**From:** Carlos Yep
**To:** Mike Manning; Ken Kandeepan; John Kim
**Subject:** FW: Financing Plan - Protection Agreement Maximum
**Date:** Friday, November 17, 2017 4:17:04 PM
**Attachments:** sample prog max.xlsx
image001.png

---

Hi
I spoke to Sheen at OPG. The initial protection agreement maximum is best if it covers 25 months ie 01Dec2017 to 31Dec2019 since the MoE estimates are per calendar year.
The next protection agreement maximum would then be calculated by adding the estimated issuance in the following 2 more calendar years.
Carlos

---

**From:** Carlos Yep
**Sent:** Friday, November 17, 2017 10:38 AM
**To:** 'LIU Sheen -TREASURY'
**Subject:** Financing Plan - Protection Agreement Maximum
Hi Sheen,
Attached is an example of the Protection Agreement Maximum

| | | | | |
|---|---|---|---|---|
| **Protection Agreement Maximum** | | | | **$4,375,000,000** |
| ( based on Financing Plan dated November XX, 2017) | | | | |
| | | | | |
| | | | | |
| | | | | |
| Forecast Period: | | from | to | |
| | Expected issuance | 1-Dec-17 | 31-Dec-17 | $ 175,000,000 |
| | Expected issuance | 1-Jan-18 | 31-Dec-18 | $ 2,100,000,000 |
| | Expected issuance | 1-Jan-19 | 30-Nov-19 | $ 1,925,000,000 |
| | Expected issuance | 1-Dec-19 | 31-Dec-19 | $ 175,000,000 |
| | | | | |

Call if you would like to discuss
Thanks
Carlos

Example:

| | | | | |
|---|---|---|---|---|
| **Protection Agreement Maximum** | | | | **$4,375,000,000** |
| ( based on Financing Plan dated November XX, 2017) | | | | |
| | | | | |
| Forecast Period: | | from | to | |
| | Expected issuance | 1-Dec-17 | 31-Dec-17 | $ 175,000,000 |
| | Expected issuance | 1-Jan-18 | 31-Dec-18 | $ 2,100,000,000 |
| | Expected issuance | 1-Jan-19 | 30-Nov-19 | $ 1,925,000,000 |
| | Expected issuance | 1-Dec-19 | 31-Dec-19 | $ 175,000,000 |

Excerpt from "Change in Law Process Agreement" dated as of XX, 2017

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's





expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

| | | | | |
|---|---|---|---|---|
| **Protection Agreement Maximum** | | | | **$4,375,000,000** |
| ( based on Financing Plan dated November XX, 2017) | | | | |
| | | | | |
| | | | | |
| | | | | |
| Forecast Period: | | from | to | |
| | Expected issuance | 1-Dec-17 | 31-Dec-17 | $ 175,000,000 |
| | Expected issuance | 1-Jan-18 | 31-Dec-18 | $ 2,100,000,000 |
| | Expected issuance | 1-Jan-19 | 30-Nov-19 | $ 1,925,000,000 |
| | Expected issuance | 1-Dec-19 | 31-Dec-19 | $ 175,000,000 |
| | | | | |

| | |
|---|---|
| **From:** | Carlos Yep |
| **To:** | Mike Manning; James Devine; Ken Kandeepan; John Kim; John Psinas |
| **Subject:** | FW: Financing Plan |
| **Date:** | Thursday, November 16, 2017 2:26:42 PM |

FYI

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, November 16, 2017 2:24 PM
**To:** Carlos Yep ; Malle Hanslep (MOF)
**Subject:** RE: Financing Plan

I read that as depending financing factors, and on the fact that principal repayments, based on the fair allocation curve, cannot begin until at least 2030, so that they would be looking for 15 year debt to start, not based on any legal or regulatory restriction on the term of the debt.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Carlos Yep [mailto:Carlos.Yep@ofina.on.ca]
**Sent:** November 16, 2017 2:12 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** Financing Plan

Malle / Tobias

I am reading the Financing Plan … and there is a section where they indicate a minimum term of the initial debt issuance of 15 years.

Is there anything that you have come across in the FHP Master Trust Indenture or any other document that prevents the FHT to issue in a term for example of 5y or 10yr?

Thanks

Carlos

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); John Kim; Carlos Yep |
| **Subject:** | FW: For Review and Comment: TB/MBC Submission on Provincial Guarantee |
| **Date:** | Monday, September 11, 2017 2:45:06 PM |
| **Attachments:** | TB20 Submission_Provincial Support Agreement_V5 with comments (2).docx<br>FW For Review and Comment TBMBC Submission on Provincial Guarantee .msg |

FYI, comments from Energy on the TB submission, attached in track changes, and below in email. I'm attaching my most recent request for Energy input so you have a sense of where I asked them to focus their remarks.

I will incorporate these comments into the version tracking for Gadi's signature at eod today.

Anna

---

**From:** Cox, Hilary (ENERGY) [mailto:Hilary.Cox@ontario.ca]
**Sent:** Monday, September 11, 2017 2:41 PM
**To:** Anna Strathy
**Cc:** Martin Schlaepfer (MOF) ; Tom McKinlay (MAG) ; Thouin, Alena (ENERGY)
**Subject:** Fw: For Review and Comment: TB/MBC Submission on Provincial Guarantee

Hi Anna -

Attached are edits to the TB sub as well as comments from our Legal below. Note that these are still with Energy MO.

Please also note LSB's comments:

"The discussions around a cap on liability are still ongoing and I don't have any updates on the status of the financing plan.

In terms of the likelihood of the triggering events (*i.e.*, future legislative action or adverse judicial determination), I think any guess would be wholly speculative. I would prefer simply to indicate that the province has undertaken to assume the risk associated with future legislative changes (which are within the province's control) or adverse judicial determination (which would be a direct result of the model adopted by the province)."

HC

# PROVINCIAL SUPPORT AGREEMENT TO OPG FINANCING ENTITY

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide a guarantee or guarantees in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the Ontario Fair Hydro Plan Act, 2017 ("OPG Financing Entities"), that, under certain circumstances as set out in the support agreement, the Province would pay when due amounts in respect of the ~~debt~~ obligations of the Financing Entity.

This submission is to request that Treasury Board:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a support agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the Ontario Fair Hydro Plan Act, 2017 that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

~~(ii)~~ to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(ii)

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

(iii)

(iv) specify a maximum liability for the guarantee or indemnity.

**Formatted:** Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"

**Formatted:** Indent: Left: 1.5", No bullets or numbering

**Formatted:** Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"

**Formatted:** Indent: Left: 1.5"

**Formatted:** Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"

**Commented [RK1]:** In this case, could it be tied to the requirements of the Act, without a specific maximum, or tied to amount consistent to some determination under the Act, such as the fair allocation amount determination, or cumulative annual fair adjustment amounts under the Act (including financing costs)?

**Commented [AS2]:** Analysis on maximum liability still underway by energy, working with OPG (Matt).

~~(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.~~

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%~~, on average~~, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).~~The OFHP includes the deferral of a portion of the Global Adjustment portion of the cost of electricity. The deferral is built around the principle that the costs incurred to put in place assets for generation and support conservation to move to a clean, reliable system, would last longer than their typical 20-year contract period and would be able to provide benefits for future ratepayers, and that the costs should be spread more fairly between current and future rates.~~ This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for or benefit from the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years.~~ This estimate is being updated and will be presented to [TB/MBC/Cabinet] as part of a report back by the Ministry of Energy.~~ The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"~~Act~~)~~,~~, which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". ~~which came into effect on June 1, 2017, the IESO is able to establish a variance account to record the deferral amounts arising from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account.~~

The OFHPA~~Act~~ provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers

**Formatted:** Indent: Left: 0"

in the future. Under the OFHPA~~Act~~, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers. ~~Ontario Power Generation Inc. as the Financial Services Manager under section 18, is authorized under section 22 to establish one or more financing entities that may incur funding obligations. Such a Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the eligible~~ ratepayers~~.~~

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable. OPG ~~is~~, therefore, has advised~~requesting~~ that the Government of Ontario provide a support agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would step in and assume the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the provincial guarantee to the following circumstances~~Certain events that would negatively impact holders of Fair Hydro Plan debt would activate the Provincial Support Agreement~~:

- Actions of~~Decisions by~~ the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA ~~of the Ontario Fair Hydro Plan Act, 2017, or amendments~~ or new legislation that adversely affect the Financing Entity;
- A court decision that declares any funding obligations of the Financing Entity to be invalid or unenforceable; and
- [Changes to the organization, structure or operations of IESO ~~adversely impacting the Financing Entity.~~or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.]

In the event the support agreement is triggered by one of these events, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as it comes due (without acceleration). In addition, the Province would also have the option to assume the Financing Entity's outstanding obligations and liabilities.~~take over the obligations of the Financing Entity including principal and interest payments on debt issued to date and any outstanding payments to service providers~~.

The support agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

**Commented [ESP3]:** Suggest use of this language (from an earlier ''version 3'' of this document).

**Commented [MOF LSB4]:** Might be helpful to include more information about OPG developing the Financing Plan, what funding obligations are, etc.

**Commented [RK5]:** I'd see if Energy can share its description on this.

**Commented [AS6]:**

**Commented [ESP7]:** Recommend deleting.

This does not appear to be consistent with the latest term sheet shared on Wednesday Sept. 6. That version did not include this circumstance/event in its list of ''Assumption Events''

**Commented [ESP8]:** Is this consistent with Term Sheet?

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is required before a ministry seeks an Order in Council authorizing a guarantee or indemnity or before a ministry enters into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance, together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

**Commented [ESP9]:** Believe this is what is being referenced?

**Formatted:** Font: Italic

**Commented [ESP10]:** Is there an OIC drafted or is this just a proposed approach should an OIC be required?

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the support agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the support agreement is provided the Province of Ontario takes on a contingent liability. The amount of the liability would increase over the duration of the Fair Hydro Plan and peak at an estimated [$24B to $26B (to be revised as Energy re-estimates)] of debt, including principal and accumulated~~, along with associated~~ interest ~~payments~~.

**Commented [ESP11]:** Pending finalization of costs forecasts - this work is still ongoing with OPG.

In the event the support agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the guarantee.

**Commented [MOF LSB12]:** OPCD to review

**Commented [RK13]:** Could include Energy's curve from the March 2nd CabSub, as well as the interim update in the more recent LTEP deck---but would be subject to updates per Energy's anticipated forthcoming submissions cited above.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between [$0.8B and $1.3B] per annum, depending on the interest rate at which the Financing entity will be able to borrow at.

**Commented [ESP14]:** Work is still ongoing between ENERGY and OPG regarding finalizing amounts - including interest.

**Commented [MOF LSB15]:** Include of a discussion of the risk associated with the trigger events – what are the risks – are there legal risks regarding the legislation and whether a court might find it to be invalid for some reason – have legal opinions been obtained on this? Are some of these risks within the control of the government so can be mitigated in some way?

It is important to note that, if the support agreement is triggered, and the Province assumes the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA~~Act~~ continue or not, in some form. If the payment streams from ratepayers via the collection of~~in~~ the Clean Energy Adjustment (CEA) continue,

**Commented [RK16]:** We should get input from Energy on this, to be consistent with what is, or will be, in Energy submissions.

**Commented [ESP17]:** I don't believe our TB Subs spoke to this point.

this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Commented [ESP18]: This section was not in earlier version - unsure of its necessity?

Key Messages

- Ontario's Fair Hydro Plan has ~~will~~ resulted in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we ~~are~~ moved~~ing~~ forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## ~~7.~~9. RECOMMENDATION

(a) Approve that the Minister of Finance and Minister of Energy provide a support agreement, as contemplated under the *Ontario Fair Hydro Plan Act*, to one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend to~~that~~ Cabinet ~~approve~~ an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(ii)

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

(iii)

(iv) specify a maximum liability for the guarantee or indemnity.

~~(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.~~

**Commented [MOF LSB19]:** It may be the case that this is a more general approval and the 2 Ministers will determine the terms and condition in accordance with the authorization given to them by the OIC. It depends on how soon the actual wording of the guarantee can be confirmed as opposed to the draft term sheet – The province should not sign of commit to the term sheet as the province's authority comes from the OIC.

**Formatted:** Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"

**Formatted:** Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"

**APPENDIX**

[Insert Final Term Sheet]

**From:** Anna Strathy []
**To:** Steen Hume (CAB) [Steen.Hume@ontario.ca]
**CC:** Gadi Mayman [Gadi.Mayman@ofina.on.ca]; Hilary Cox (ENE) [Hilary.Cox@ontario.ca]; Keley Katona (ENERGY) [Keley.Katona@ontario.ca]
**Subject:** FW: For Review and Comment: TB/MBC Submission on Provincial Guarantee
**Date:** Friday, September 08, 2017 08:42:53
**Attachment 1:** TB20 Submission_Provincial Support Agreement_V5 with comments.docx

---

Hi Steen,

Our lawyers have indicated that it would be prudent to have both Ministers of Energy and Finance sign the TB submission for the Provincial Support Agreement since both Ministers will recommend the OIC and both will sign the Support Agreement. Gadi is signing off on the TB submission at the end of the day today and then it will track to both DMOs for early next week.

I'm attaching the latest version of the TB submission (v.5) for your review and comment. Changes (from the version you received last Thursday) have been tracked. You'll see there remains three areas that would benefit from Energy's input:

- Maximum liability – and if analysis is still underway, would be good to indicate that
- Additional information on the Financing Plan
- Discussion of the risk/likelihood of trigger events

I also have removed the minute relating to the s. 28 request from the Minister of Energy. I understand that, because the Minister of Finance is recommending the OIC, his approval of the contingent liability is implicit.

Please don't hesitate to contact me or Gadi should you have any questions.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**From:** Anna Strathy
**Sent:** Thursday, August 31, 2017 10:44 AM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep

<Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: For Review and Comment: TB/MBC Submission on Provincial Guarantee

Hi All,

Please find attached the latest version of the TB submission, which includes some comments in the margins that still need to be addressed. Thanks to everyone who has provided edits so far. I'd like to reiterate that we're still tracking the Sept. 26 TB/MBC meeting, which means we'll have to brief our Minister next week in order to provide a final submission to TBS three weeks before the meeting.

As many of you may already know, we are now calling it a "Provincial Support Agreement" as opposed to "Provincial guarantee" as MOF legal advised this is not a true guarantee as the agreement would be contingent on certain events (whereas a guarantee would not).

Please provide further comments and edits as appropriate. We're looking to have program area and legal sign-off by Wed. Sept. 6.

Thanks,
Matt Breadner on behalf of Anna Strathy

**From:** Anna Strathy
**Sent:** Friday, August 18, 2017 4:07 PM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: For Review and Comment: TB/MBC Submission on Provincial Guarantee

Good afternoon,

We are now tracking the Provincial Guarantee to TB/MBC for September 26 as a Ministry of Finance item. We'll need to brief our Minister the first week of September in order to provide a final submission to TBS three weeks before the meeting. Thank you to those that have provided comments on the attached. Further comments and edits would be much appreciated.

I'll be away for the next two weeks, but Matt Breadner will be acting for me and will have access to my email. Matt will be consolidating your input and circulating revised drafts to this group. Please continue to route your comments through my email.

Thank you, Anna

**From:** Anna Strathy
**Sent:** Thursday, August 17, 2017 12:52 PM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>
**Subject:** For Review and Comment: TB/MBC Submission on Provincial Guarantee

Hi Cindy, Steen, Kelly (for Scott), and Malle,

Attached, for your review and comment, is a draft TB submission for the Provincial Guarantee.

This submission is somewhat premature, as there continue to be discussions about which Ministry might bring this forward (for instance, the Provincial Guarantee piece could be incorporated into a broader report back by the Ministry of Energy) and when this might go to TB/MBC (mid to late September); however, Gadi is on vacation for two weeks starting Monday, so we wanted to get a head start on something that could be moved forward in his absence.

I apologize for the tight timelines, but **we are hoping to have your comments (even preliminary comments) by noon tomorrow**. I expect that subsequent iterations of this submission and/or the TB Assessment Note will be circulated again for your input.

Please don't hesitate to contact me should you have any questions.

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

# PROVINCIAL SUPPORT AGREEMENT TO OPG FINANCING ENTITY

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide a guarantee or guarantees in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the Ontario Fair Hydro Plan Act, 2017 ("OPG Financing Entities"), that, under certain circumstances as set out in the support agreement, the Province would pay when due amounts in respect of the ~~debt~~ obligations of the Financing Entity.

This submission is to request that Treasury Board:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a support agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the Ontario Fair Hydro Plan Act, 2017 that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

~~(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.~~

**3. BACKGROUND:**

**Commented [RK1]:** In this case, could it be tied to the requirements of the Act, without a specific maximum, or tied to amount consistent to some determination under the Act, such as the fair allocation amount determination, or cumulative annual fair adjustment amounts under the Act (including financing costs)?

**Commented [AS2]:** Analysis on maximum liability still underway by energy, working with OPG (Matt).

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. The OFHP includes the deferral of a portion of the Global Adjustment portion of the cost of electricity. The deferral is built around the principle that the costs incurred to put in place assets for generation and support conservation to move to a clean, reliable system, would last longer than their typical 20-year contract period and would be able to provide benefits for future ratepayers, and that the costs should be spread more fairly between current and future rates.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. This estimate is being updated and will be presented to [TB/MBC/Cabinet] as part of a report-back by the Ministry of Energy.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the Act), which came into effect on June 1, 2017, the IESO is able to establish a variance account to record the deferral amounts arising from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account. The Act provides for the IESO to sell the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the Act, Ontario Power Generation Inc. as the Financial Services Manager under section 18, is authorized under section 22 to establish one or more financing entities that may incur funding obligations. Such a Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the eligible ratepayers.

**Commented [MOF LSB3]:** Might be helpful to include more information about OPG developing the Financing Plan, what funding obligations are, etc.

**Commented [RK4]:** I'd see if Energy can share its description on this.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable. OPG is, therefore, requesting that the Government of Ontario provide a support agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would step in and assume the funding obligations of the Financing Entity.

Certain events that would negatively impact holders of Fair Hydro Plan debt would activate the Provincial Support Agreement:

- Decisions by the Legislative Assembly, i.e., repeal of the Ontario Fair

Hydro Plan Act, 2017, or amendments or new legislation that adversely affect the Financing Entity;

- A court decision that declares any funding obligations of the Financing Entity to be invalid or unenforceable; and
- [Changes to the organization, structure or operations of IESO ~~adversely impacting the Financing Entity.~~or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.]

Commented [AS5]:

In the event the support agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as it comes due (without acceleration). In addition, the Province would also have the option to assume the Financing Entity's outstanding obligations and liabilities.~~take over the obligations of the Financing Entity including principal and interest payments on debt issued to date and any outstanding payments to service providers~~.

The support agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

~~———~~Section 28 of the FAA requires that the Minister of Finance's approval is required before a ministry seeks an Order in Council authorizing a guarantee or indemnity or before a ministry enters into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance, together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the support agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the support agreement is provided the Province of Ontario takes on a contingent liability. The amount of the liability would increase over the duration of the Fair Hydro Plan and peak at an estimated [$24B to $26B (to be revised as

Energy re-estimates)] of debt principal, along with associated interest payments.

In the event the support agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the guarantee.

**Commented [MOF LSB6]:** OPCD to review

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between [$0.8B and $1.3B] per annum, depending on the interest rate at which the Financing entity will be able to borrow at.

**Commented [RK7]:** Could include Energy's curve from the March 2nd CabSub, as well as the interim update in the more recent LTEP deck---but would be subject to updates per Energy's anticipated forthcoming submissions cited above.

It is important to note that, if the support agreement is triggered, and the Province assumes the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the Act continue or not, in some form. If the payment streams from ratepayers in the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

**Commented [MOF LSB8]:** Include of a discussion of the risk associated with the trigger events – what are the risks – are there legal risks regarding the legislation and whether a court might find it to be invalid for some reason – have legal opinions been obtained on this? Are some of these risks within the control of the government so can be mitigated in some way?

**Commented [RK9]:** We should get input from Energy on this, to be consistent with what is, or will be, in Energy submissions.

## 7. COMMUNICATION PLAN

### Key Messages

- Ontario's Fair Hydro Plan will result in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we are moving forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

### Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## ~~7.~~9. RECOMMENDATION

(a) Approve that the Minister of Finance and Minister of Energy provide a support agreement, as contemplated under the *Ontario Fair Hydro Plan Act*, to one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

~~(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.~~

**Commented [MOF LSB10]:** It may be the case that this is a more general approval and the 2 Ministers will determine the terms and condition in accordance with the authorization given to them by the OIC. It depends on how soon the actual wording of the guarantee can be confirmed as opposed to the draft term sheet – The province should not sign of commit to the term sheet as the province's authority comes from the OIC.

**APPENDIX**

[Insert Final Term Sheet]

**From:** Sarah Harris
**To:** Mike Manning
**Cc:** Opal Kandelas; Jean-Francois Beaupre
**Subject:** FW: IESO credit facility
**Date:** Friday, October 20, 2017 12:55:05 PM

---

Hi Mike,

As an update on IESO, according to John K "IESO has not provided any edits [to the Credit Facility Agreement] but seem to be indicating that they are getting close to being prepared to sign."

At the same time,"[OPG] Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu."

Will and I met with John K, Francisco, Sarah Neville, Lisa Stein and Toby from LSB to discuss this. The issues are as follows:

1 – Under the draft FHP draft facility, OFA ranks pari passu with all other unsubordinated debt and unsecured Indebtedness of IESO, subject to the existence of any Liens that secure Indebtedness. If the Trust has 1st priority/security over all IESO assets, this (as we currently understand OPG's request) renders the protection our Permitted Liens section moot, and also renders the Negative Pledge section moot since it states that

> *The IESO will not, and will not permit any Material Subsidiary to, create, incur or assume any Lien, charging the interest of the IESO or any Material Subsidiary in any property, to secure any obligations (including any Indebtedness) unless, at or prior to the time such Lien is created, incurred or assumed, all amounts owing under this Agreement are secured equally and rateably with any and all such obligations secured or to be secured by such Lien, for so long as such obligations shall be secured*

Based on my understanding, this would be a fundamental change in the OFA's approach if we permit the Trust to have 1st priority/security over all IESO assets.

2 – If IESO is close to execution, it would be important for the OFA not to give any undertaking to IESO that it would be willing to restructuring any existing facilities, and that any such change would be dependent at that time on analysis of the circumstances and any approvals.

3 – From a simplicity standpoint, the directive to exempt the intercept provision from the credit facility is still the most immediately simple option. However, within the next week it is thought that we should proceed with the tripartite letter PROVIDED that the OFA gives no undertaking to amend its credit facilities down the road. Our speculation is that IESO has some resistance to OPG taking 1st priority interest in all IESO assets and that it may be levering the inclusion of the intercept provision as a reason why OPG can't have a 1st priority claim in all IESO assets. There was also some discussion as to whether the intercept provision could be "secured" by OPG Trust – on the face we don't think so, but more analysis would need to be done as to the legislature appropriations status under the PPSA and the ability for OPG Trust take a security into legislature appropriations.

4- Also, according to Francisco, following the AG's report there is sensitivity around the pricing of the OPG Asset. Particularly if it is thought that the exclusion of the intercept provision from the agreement will add to credit rating agencies view that IESO's assets and cashflows will be unencumbered, it adds suasion to the argument for the Minister to sign an exempting directive.

John Kim will update Ron Kwan who will hopefully in turn brief Gadi. Time is of the essence, since the next IESO draw is on November 21, and the existing credit facility limit would be exceeded by the

next draw.
Thanks,
Sarah

---

**From:** John Kim
**Sent:** Friday, October 20, 2017 9:44 AM
**To:** Sarah Harris
**Subject:** RE: IESO credit facility

Hi Sarah,
Do you see any issue with the priority of payment/asset part in implementing it?
Let me know what you think pls.
John.

---

**From:** John Kim
**Sent:** Friday, October 20, 2017 8:08 AM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: IESO credit facility

Hi,
Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.
IESO has indicated the following and I will ask you to give it some thought:
"DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu."
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 06, 2017 10:16 AM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: IESO credit facility

Partial good news on Energy's side.
I will reach out to Anthony again to nudge things along on IESO side.
John

---

**From:** McKinlay, Tom (MAG) [mailto:Tom.McKinlay@ontario.ca]
**Sent:** Friday, October 06, 2017 10:07 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
**Subject:** RE: IESO credit facility

John,
I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.
Tom.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** September 27, 2017 11:50 AM
**To:** McKinlay, Tom (MAG)
**Subject:** RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

---

**From:** John Kim
**Sent:** Monday, September 25, 2017 2:03 PM
**To:** Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** RE: IESO credit facility

My apologies….this email was sent to the wrong address.

---

**From:** John Kim
**Sent:** Thursday, September 21, 2017 11:42 AM
**To:** Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
**Subject:** IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Sarah Harris |
| **To:** | Mike Manning; Opal Kandelas |
| **Cc:** | Jean-Francois Beaupre; William Tan |
| **Subject:** | FW: IESO credit facility |
| **Date:** | Friday, October 20, 2017 2:00:32 PM |

---

FYI…Further IESO update.

**From:** John Kim
**Sent:** Friday, October 20, 2017 1:56 PM
**To:** Tobias P. Whitfield (MOF) ; Sarah Neville ; Lisa Stein ; William Tan ; Sarah Harris
**Cc:** Anna Strathy ; Francisco Chinchon
**Subject:** RE: IESO credit facility

Thanks everyone for joining the chat on short notice and also to Francisco for helping out. And sorry, didn't mean to leave out Sarah H. in my email this morning.

One of the takeaways from the meeting for me was that we need to let IESO know within reasonable timeframe that amending the existing facilities at any point would require appropriate approvals, likely involving a Directive and that we cannot actively or passively acquiesce [not sure if this is the appropriate word] by not responding. That it would require appropriate approvals when IESO has reasonably concluded its discussion on the matter. I just sent that in an email response following a phone call and also wanted to flag that IESO is expecting the next draft on Wednesday so I think we are looking at that as when we will have a sense of where the two entities stand.

All said, we are working on the Directive option in parallel.

John

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Friday, October 20, 2017 10:15 AM
**To:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IESO credit facility

I agree that Sarah's question is an important one. What is the purpose of the security interest? I didn't know that the Trust was going to be a creditor of IESO?

Is there some background on that issue?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Sarah Neville [mailto:Sarah.Neville@ofina.on.ca]
**Sent:** October 20, 2017 10:13 AM
**To:** Stein, Lisa (OFA); Kim, John (OFA); Tan, William (OFA)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: IESO credit facility

I agree with Lisa re intercept.

As a sidebar, not an OFA issue and way beyond my expertise, but is there any concern/discussion that the Trust, if given a first priority over ALL the asset of the IESO could potentially enforce a security interest and liquidate a significant entity responsible for overseeing the supply of electricity into Ontario? Is anyone weighing in on this question -IESO/MOE?

Sarah

---

**From:** Lisa Stein
**Sent:** Friday, October 20, 2017 10:02 AM
**To:** John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: IESO credit facility

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.
I've copied Toby from MOF Legal as a heads up.
Lisa

---

**From:** John Kim
**Sent:** Friday, October 20, 2017 8:08 AM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: IESO credit facility

Hi,
Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.
IESO has indicated the following and I will ask you to give it some thought:
"DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu."
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 06, 2017 10:16 AM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: IESO credit facility

Partial good news on Energy's side.
I will reach out to Anthony again to nudge things along on IESO side.
John

---

**From:** McKinlay, Tom (MAG) [mailto:Tom.McKinlay@ontario.ca]
**Sent:** Friday, October 06, 2017 10:07 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
**Subject:** RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft). I am still working to determine who will sign for Energy and I'll let you know shortly. Tom.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** September 27, 2017 11:50 AM
**To:** McKinlay, Tom (MAG)
**Subject:** RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

---

**From:** John Kim
**Sent:** Monday, September 25, 2017 2:03 PM
**To:** Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** RE: IESO credit facility

My apologies….this email was sent to the wrong address.

---

**From:** John Kim
**Sent:** Thursday, September 21, 2017 11:42 AM
**To:** Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
**Subject:** IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John
Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Interest Rate Sensitivities (2017 08 23)_v5.pptx |
| **Date:** | Monday, October 02, 2017 8:32:33 PM |
| **Attachments:** | Interest Rate Sensitivities (2017 08 23)_v5.pptx |

---

**From:** John Kim
**Sent:** Wednesday, September 27, 2017 2:06 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Interest Rate Sensitivities (2017 08 23)_v5.pptx

Hi Carlos,

Attached is the summary data we compiled from the mid-August data. Energy had indicated that it clearly wasn't the final version. I know Energy had referred recently to an August 30th version but they indicate that isn't the final version either.

I can send the raw file but I am just not sure how useful it would be.

Thanks,

John

# Interest Rate Scenarios: Energy LTEP Model

DRAFT

- The preliminary interest cost estimates are based on Ministry of Energy Global Adjustment cost amounts to be deferred consistent with LTEP modelling assumptions.
  - The sensitivities were modelled by assuming alternate interest rates and allowing term to differ from the status quo 30-year assumption.
  - There are other assumptions in the Energy model, such as the YOY increase after 2022, that could also be changed. The current analysis does not explore all scenarios.
  - GA deferral estimates are subject to updates from the Ministry of Energy.
  - Actual annual and cumulative interest costs are sensitive to actual borrowing rates.
  - Sensitivities shown on lower interest rates assume faster debt pay down.

2% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.648 billion in 2029 | $10.7 billion | $18.4 billion | 2042 (25-year term) |
| 4.0% | $0.777 billion in 2029 | $13.3 billion | $19.3 billion | 2043 (26-year term) |
| 4.5% | $0.918 billion in 2029 | $16.9 billion | $20.3 billion | 2045 (28-year term) |
| 5.0% | $1.076 billion in 2030 | $21.3 billion | $21.3 billion | 2047 (30-year term) |

3% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.598 billion in 2029 | $9.8 billion | $17.0 billion | 2042 (25-year term) |
| 4.0% | $0.717 billion in 2029 | $12.1 billion | $17.8 billion | 2043 (26-year term) |
| 4.5% | $0.848 billion in 2029 | $15.4 billion | $18.7 billion | 2045 (28-year term) |
| 5.0% | $0.991 billion in 2030 | $19.4 billion | $19.7 billion | 2047 (30-year term) |

Note: Above tables provide interest rate sensitivity scenarios based on Energy's draft LTEP deck dated August 15, 2017 and are subject to change

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Mike Manning |
| **Subject:** | FW: Interest Rate Sensitivities (2017 08 23)_v5.pptx |
| **Date:** | Monday, October 02, 2017 8:32:34 PM |
| **Attachments:** | Interest Rate Sensitivities (2017 08 23)_v5.pptx |

---

**From:** John Kim
**Sent:** Wednesday, September 27, 2017 2:06 PM
**To:** Carlos Yep
**Cc:** Ken Kandeepan ; James Devine ; Mike Manning ; Anna Strathy
**Subject:** Interest Rate Sensitivities (2017 08 23)_v5.pptx

Hi Carlos,

Attached is the summary data we compiled from the mid-August data. Energy had indicated that it clearly wasn't the final version. I know Energy had referred recently to an August 30th version but they indicate that isn't the final version either.

I can send the raw file but I am just not sure how useful it would be.

Thanks,

John

# Interest Rate Scenarios: Energy LTEP Model

DRAFT

- The preliminary interest cost estimates are based on Ministry of Energy Global Adjustment cost amounts to be deferred consistent with LTEP modelling assumptions.
  - The sensitivities were modelled by assuming alternate interest rates and allowing term to differ from the status quo 30-year assumption.
  - There are other assumptions in the Energy model, such as the YOY increase after 2022, that could also be changed. The current analysis does not explore all scenarios.
  - GA deferral estimates are subject to updates from the Ministry of Energy.
  - Actual annual and cumulative interest costs are sensitive to actual borrowing rates.
  - Sensitivities shown on lower interest rates assume faster debt pay down.

2% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.648 billion in 2029 | $10.7 billion | $18.4 billion | 2042 (25-year term) |
| 4.0% | $0.777 billion in 2029 | $13.3 billion | $19.3 billion | 2043 (26-year term) |
| 4.5% | $0.918 billion in 2029 | $16.9 billion | $20.3 billion | 2045 (28-year term) |
| 5.0% | $1.076 billion in 2030 | $21.3 billion | $21.3 billion | 2047 (30-year term) |

3% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.598 billion in 2029 | $9.8 billion | $17.0 billion | 2042 (25-year term) |
| 4.0% | $0.717 billion in 2029 | $12.1 billion | $17.8 billion | 2043 (26-year term) |
| 4.5% | $0.848 billion in 2029 | $15.4 billion | $18.7 billion | 2045 (28-year term) |
| 5.0% | $0.991 billion in 2030 | $19.4 billion | $19.7 billion | 2047 (30-year term) |

Note: Above tables provide interest rate sensitivity scenarios based on Energy's draft LTEP deck dated August 15, 2017 and are subject to change

**From:** Anna Strathy
**To:** Gadi Mayman; Ronald Kwan; Mike Manning; Ken Kandeepan
**Subject:** FW: KMs and Q&As
**Date:** Friday, October 13, 2017 12:56:43 PM
**Attachments:** QA_AG Report OFHP_Technical Briefing.docx

---

Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) ; Allison Ue (MCSS) ; Patrick Laughton (MOF) ; Anna Strathy ; Kyle MacIntyre (MOF) ; Hilary Cox (ENE)
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred costs should be borne by the rate-base and not the tax-base.

Based on this policy decision, it was decided that the debt obligation would be recognized as a regulatory asset that would be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (i.e., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be note that FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2017 period; and
- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages an $18 billion nuclear fund and as an entity regulated by the Ontario Energy Board (OEB), OPG also has extensive experience with regulatory deferral and variance accounts.

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties … Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Base on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

Response prepared by MOF/ OFA as Part of the Minister's Speaking Points

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province.**

The policy objective of OFHP is to smooth the cost to ratepayers over the useful life, not the contractual life, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base. The Province has not calculated a differential between the Province and the Financing Entity's borrowing costs, because of this policy decision.

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, resulting in higher interest costs.

The $4 billion figure was sourced from the FAO's May 2017 report, and a similar figure was never calculated by the Province. However, it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's annual report which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 2013) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is however silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the decision making process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan an accounting/ finance structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy;
- Ministry of Finance;
- Treasury Board Secretariat;
- Office of the Provincial Controller;
- Cabinet Office;
- Ontario Financial Authority (OFA);
- Independent Electricity System Operator (IESO); and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

Response prepared by TBS as Part of the Minister's Speaking Points

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

**From:** Mike Manning
**To:** Gadi Mayman
**Subject:** FW: OFA role in reviewing fees
**Date:** Friday, September 01, 2017 2:24:17 PM

---

Hi Gadi:
We can discuss the pros and cons next week. No commitment has been made, and John Lee has shared a few ideas which may limit our involvement.
Talk to you next week.

Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Wednesday, August 30, 2017 5:10 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** OFA role in reviewing fees

Hi Mike,

DM of Energy was interested in whether OFA could play a role in reviewing the OPG trust fee structure on an ongoing basis. As you may know, Energy and OPG have been discussing how fees to act as financial services manager for the trust will be set for some time. OPG would like to use a traditional asset manager model (management fee based on AUM + performance fee). Energy would prefer to replace the fixed management fee with a "cost +" model that is reviewed and approved by the OEB.

Energy has received strong push back from OPG from an accounting perspective on this model and on OEB oversight. The DM was blue-skying and wondered whether OFA could step into the role of reviewer of the fee structure to ensure it was reasonable. This would help with optics and hopefully result in a more reasonable cost to ratepayers on an ongoing basis. I think OFA will be doing something similar on sub-debt so wondered if that could be extended.

I realize Gadi will need to weigh in on this, but if you have any preliminary thoughts that would be helpful. We have a meeting tomorrow AM with the broader group on OFHP and I will be asked this question. Any early insights would be much appreciated.

Thanks,
Scott

Scott Nelms
Government Business Enterprises | Ministry of Finance
7th Floor | 375 University ave. | Toronto, ON
w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca

**From:** Gavin He
**To:** Ken Kandeepan; Mike Manning
**Cc:** John Kim; Kenneth Russell
**Subject:** FW: OFA/Energy MOU - Follow up from Nov 9 meeting
**Date:** Tuesday, November 14, 2017 9:04:17 AM
**Attachments:** OFA - MoE MOU Fair Hydro Plan_v9(OFA Legal).docx
FAA section 11.4 Certificate Form_Draft(v3).docx

---

Hi Ken and Mike,
Last week, we attended a meeting with Energy and OPG to discuss the Master Subscription Agreement for the equity injection process. Ken Russell drafted a MOU between OFA and Energy before about making the equity injection payments on Energy's behalf. Also, Ken R. drafted a FAA section 11.4 certificate form as well. After the meeting, Ken R. has updated both document, see attached, based on the discussion.
Could you please kindly review and let us know if you have any comments/concerns by **noon tomorrow, Wednesday, November 15th, 2017**? In addition, could you please review and confirm questions 2&3 from Energy in below email?
Please let me know if you would like to discuss this in person, and we can set up a brief meeting.
Thanks in advance for your cooperation.
Thanks,
Gavin He

---

**From:** Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
**Sent:** Friday, November 10, 2017 11:29 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Graham Young (MOI) <Graham.Young@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>; Ogunrinde, Deni (ENERGY) <Deni.Ogunrinde@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** OFA/Energy MOU - Follow up from Nov 9 meeting
Hi John,
Thanks for meeting with us yesterday on the equity injection process. It was helpful to have everyone together in one place.

I hope to get the ENERGY-OFA MOU completed and ready for approvals by the end of next week. In order to do that, these are the following outstanding pieces. Right now, the OFA is holding the pen on the document, so it makes sense for you to include these items in the version you are working off and we can review next week:

1. Template for the FAA Section 11.4 certificate. I propose we include this as a schedule to the MOU. Also, please confirm the timing of when the certificate should be provided to OFA each month i.e., alongside the share subscription form, or after the payments have been made.
2. Identify how ENERGY should confirm that there is sufficient Appropriated Amount for the payments each month. The need for this is identified in 2b of the draft MOU. As discussed yesterday, it would be ideal if this could be done in the same certificate mentioned above.
3. Confirm the following:
    - OFA has OPG's wire transfer information (suggest including this information as a

separate schedule)

- Scanned electronic copies for the share subscription form & FAA certificate are acceptable
- Every month, the OFA will inform the Ministry of Energy via email once the payments have been made.

Let us know if you have any questions. We are working with our legal on the delegation memos. Also as discussed at yesterday's meeting, we will update the flowchart and circulate.

Thanks,

Shruti

**Shruti Talwar**
*Director, Strategic Policy and Analytics Branch*
*Strategic, Network and Agency Policy Division*
*Ontario Ministry of Energy*
416.325-8698
shruti.talwar@ontario.ca

**Memorandum of Understanding**
**Relating to the**
**Fair Hydro Plan**

**Dated:** XXXXXXX

**Between:**

**Her Majesty the Queen in right of Ontario**
as represented by the Minister of Energy (the "~~Minister~~Ministry")

**And:**

**Ontario Financing Authority**
an agency of the Province of Ontario (the "**OFA**")

**Whereas:**

1. The Government of Ontario enacted the *Ontario Fair Hydro Plan Act, 2017* (the "Act") to implement its Fair Hydro Plan (the "FHP").

2. The Act and the regulations promulgated under the Act (the "Regulations") provides the right for IESO to create certain assets related to the deferral of electricity charges (the "Assets"), which Assets may be acquired from the Independent Electricity System Operator ("IESO") by one or more special purpose financing entities, under the Act established by OPG to implement the FHP (each an "OPG Financing Entity"), which are expected to include a Fair Hydro Trust.

3. An OPG Financing Entity is expected to acquire the Assets monthly from the IESO and will finance the Assets in accordance with the financing plan, which includes both senior debt (minimum of 51%) from external sources and subordinated debt (up to 49%) from OPG.

4. The ~~Minister~~Ministry has agreed to provide up to 44% of the total funding requirement for the Assets through equity injections in OPG and OPG has agreed to use the equity injections solely for funding an OPG Financing Entity's subordinated debt (the "Equity Injection Plan").

5. For purposes of the Equity Injection Plan, OPG has amended its articles to create a new class of non-voting, redeemable shares (the "Class A Shares").

6. The ~~Minister~~Ministry will subscribe for Class A Shares monthly.

7. Each month OPG will deliver to the ~~Minister~~Ministry a share subscription form (the "Share Subscription") setting out the amount of equity injection required (the

"Subscription Payment") and the corresponding number of Class A Shares to be issued by OPG and subscribed for by the ~~Minister~~Ministry.

8. The ~~Minister~~Ministry is required to pay the Subscription Payments out of amounts appropriated by the Legislature for that purpose for the fiscal year in which the payment is made ("Appropriated Amount").

9. The ~~Minister~~Ministry has advised the OFA that the ~~Minister~~Ministry is required to make the Subscription Payments within [*] business days of the receipt by the ~~Minister~~Ministry of the Share Subscription (the "Share Subscription Payment Date").

10. The ~~Minister~~Ministry considers it advisable for the OFA to make the Subscription Payments on behalf of the ~~Minister~~Ministry and the OFA has agreed to make the Subscription Payments on behalf of the ~~Minister~~Ministry.

11. The ~~Minister~~Ministry and the OFA wish to enter into this MOU to confirm their agreement regarding the terms on which the OFA will make the Subscription Payments.

**Therefore:**

The ~~Minister~~Ministry and the OFA agree as follows:

**1) Payment Authorization**

a) The ~~Minister~~Ministry authorizes the OFA to make the Subscription Payments on behalf of the ~~Minister~~Ministry and the OFA agrees to make the Payments on behalf of the ~~Minister~~Ministry.

~~b) The Minister shall ensure that the certificate under section 11.4 of the *Financial Administration Act* (reproduced as Schedule A to this MOU) required for each of the Subscription Payments is completed, and shall provide the OFA with a copy of such certificate within **[*]** days after the Subscription Payment is made to OPG.~~

~~c)~~b) It is agreed by the ~~Minister~~Ministry and the OFA that the OFA is acting as an agent, on behalf of the ~~Minister~~Ministry, for the purposes of

i) Transacting with the Ontario Shared Services "IFIS" system in order to access funds appropriated for the ~~Minister~~Ministry in respect of the Fair Hydro Plan, and

ii) Making the required Subscription Payments on behalf of the ~~Minister~~Ministry as further described in this MOU.

**2) Payment Process**

a) The ~~Minister~~Ministry will take all necessary steps to provide the OFA with a good quality unapproved electronic copy of each Share Subscription, on the same day the ~~Minister~~Ministry receives the Share Subscription from OPG to allow the OFA to begin the procedures for making the Subscription Payment.

b) The ~~Minister~~Ministry will deliver to the OFA at least three business days before the Share Subscription Payment Date:

a. a good quality copy of each Share Subscription executed and approved for payment by **[insert appropriate MoE official]**, and

~~b)~~b. a certificate confirming that ~~at least three business days before the Share Subscription Payment Date. The approval for payment shall include confirmation that~~ there is a sufficient Appropriated Amount from which to make the Subscription Payment and, under Section 11.4 of the *Financial* Administration *Act*, that OPG is entitled to receive the Subscription Payment (the "Certificate"). The form of the Certificate is attached as Schedule A to this MOU. Upon receipt of the executed and approved Share Subscription and the Certificate, the OFA will make the Subscription Payment on behalf of the ~~Minister~~Ministry, in the amount of the Share Subscription.

c) The OFA shall not be required to make any Subscription Payment on behalf of the ~~Minister~~Ministry if the ~~Minister~~Ministry has not delivered to the OFA an executed and approved Share Subscription and the Certificate as provided in paragraph b) above.

d) The Subscription Payments will be made from the Consolidated Revenue Fund and the amount of each Subscription Payment will be entered by the OFA via a journal entry into the Province's IFIS system under a pre-defined ~~Minister~~Ministry account immediately upon the completion of the Subscription Payment or shortly thereafter.

**3) Reporting Requirements and Records**

a) The OFA will deliver a notice by e-mail to the ~~Minister~~Ministry's contact person to confirm the completion of each Subscription Payment in the amount of the Share Subscription.

b) The OFA will keep and maintain all records related to the Share Subscriptions for a period of seven (7) years.

c) The requirements under this section shall survive any termination of the MOU.

d) The Public Accounts, Volume 3 reporting related to the Subscription payments will be performed by the ~~Minister~~Ministry.

**4) Limited Role of the OFA**

The OFA will only be responsible for making the Subscription Payments in accordance with section 2 and reporting and record keeping in accordance with section 3. For greater clarity, the OFA will not be responsible for auditing or otherwise verifying the correctness of the Share Subscriptions; monitoring the OPG's application of the Subscription Payments;

**Formatted:** Font: (Default) Arial

**Formatted:** Indent: Left: 0.5", No bullets or numbering

**Formatted**

**Formatted:** Font: Not Italic

monitoring the balance from time to time of the Appropriated Amount; or ensuring the Appropriated Amount is sufficient.

**5) Review and Termination**

a) The ~~Minister~~Ministry and the OFA will review this MOU as necessary.

b) This MOU may be terminated by either party at any time, on 90 days' notice.

c) Upon termination of this MOU, provided the OFA has the power and authority to make such Subscription Payments, the OFA will make Subscription Payments in respect of executed and approved Share Subscriptions delivered by the ~~Minister~~Ministry to the OFA on or before the date of termination in accordance with subsection 2(c) of this MOU, but will not be obligated to make any further Subscription Payments on any executed and approved Share Subscriptions delivered by the ~~Minister~~Ministry to the OFA after the date of termination of this MOU. All provisions of this MOU relating to Subscription Payments made by OFA will continue to apply with respect to such Subscription Payments made by the OFA after the termination date, notwithstanding termination of this MOU.

d) The parties will cooperate to help to ensure a smooth transition of the payment function upon termination.

**6) No Service Charges**

The OFA will not charge the ~~Minister~~Ministry for the OFA's services or for its disbursements or other expenses incurred under this MOU.

**7) Contacts**

a) Each party shall designate a member of its staff to be a contact person for the purposes of administering this MOU.

b) As of the date of this MOU the OFA's contact persons are:

Tel:
email:

Tel: email:

should also be sent to:

Tel: email: & email:

c) As of the date of this MOU the ~~Minister~~Ministry's contact person is:

Tel:
email:

d) Either party may designate a different member of its staff as its contact person by providing notice to the other party in accordance with section 7.

**8) Notice**

a) Any notice under this MOU shall be in writing and shall be deemed given when delivered by hand or email, and addressed to the party's contact person.

b) In the case of the OFA, the addresses for notice are:
Hand Delivery:
Ontario Financing Authority
Suite 1400
1 Dundas St. W.
Attention: Ken Kandeepan, Chief Financial and Risk Officer
email: Ken.Kandeepan@ofina.on.ca

c) In the case of the ~~Minister~~Ministry, the addresses for notice are:
Hand Delivery:
Ministry of Energy

**9) Execution**

The parties have executed this MOU, effective as of the date first above written.

**Her Majesty the Queen in right of Ontario**
as represented by the Minister of Energy

by:_____

name:
title:

**Ontario Financing Authority**

by:_____

name:

title:

**SCHEDULE A**

**Section 11.4, *Financial Administration Act*, R.S.O. 1990, c. F.12**

**11.4** (1) No payment shall be made out of the Consolidated Revenue Fund unless, in addition to any other voucher or certificate that may be required, a person referred to in subsection (2) certifies,

(a) in the case of a payment for the supply of goods or the rendering of services after the goods are delivered or the services are rendered, that the goods have been supplied or the services have been rendered and that,

(i) the payment is in accordance with the agreement, or

(ii) the amount of the payment is reasonable, if the amount of the payment is not specified in the agreement;

(b) in the case of a payment for the supply of goods or the rendering of services before the delivery of the goods or the supply of the services, that the payment is in accordance with the agreement; or

(c) in the case of a payment not described in clause (a) or (b), that the payee is eligible for or entitled to the payment. 2002, c. 8, Sched. B, s. 2.

**Persons authorized to certify payments**

(2) Only the following persons have authority to give a certificate under subsection (1):

1. A minister or deputy minister.

2. The Speaker of the Assembly.

3. The Auditor General.

4. The Chief Electoral Officer.

5. A person authorized by the Management Board of Cabinet.

6. A person authorized by a person referred to in any of paragraphs 1 to 5. 2002, c. 8, Sched. B, s. 2; 2004, c. 17, s. 32; 2007, c. 15, s. 40 (1).

**CERTIFICATE**

**Ministry of Energy Subscription for Class A Shares of OPG**

Formatted: Centered

Formatted: Centered

Ontario Power Generation Inc. ("OPG ") has delivered to the Ministry of Energy (the Ministry") a share subscription form dated **[date]** (the "Share Subscription Form") pursuant to the Master Share Subscription Agreement between the Ministry and OPG dated **[date]**

The Share Subscription Form requests payment by the Ministry to OPG of the amount of **[amount]** as consideration for the subscription for **[number]** Class A shares of OPG (the Subscription Payment").

The Ministry is required to pay the Subscription Payment out of amounts appropriated by the Legislature for that purpose for the fiscal year in which the payment is made (the "Appropriated Amount").

Section 11.4 (1)(c) of the *Financial Administration Act* provides that the Subscription Payment shall not be made unless a person authorized under that section certifies that OPG is eligible for or entitled to the Subscription Payment.

I **[Minister of Energy, or Deputy Minister of Energy, or a person authorized by either of them under FAA s. 11.4**] hereby certify that

i) There is a sufficient Appropriated Amount from which to make the Subscription Payment, and
ii) OPG is entitled to the Subscription Payment.

Dated:

_____

name:

title:

## ~~FAA SECTION 11.4 (1)(C)~~ CERTIFICATE

## Ministry of Energy Subscription for Class A Shares of OPG

Ontario Power Generation Inc. ("OPG ") has delivered to the Ministry of Energy (the Ministry") a share subscription form dated **[date]** (the "Share Subscription Form") pursuant to the Master Share Subscription Agreement between the Ministry and OPG dated **[date]**

The Share Subscription Form requests payment by the Ministry to OPG of the amount of **[amount]** as consideration for the subscription for **[number]** Class A shares of OPG (the Subscription Payment").

The Ministry is required to pay the Subscription Payment out of amounts appropriated by the Legislature for that purpose for the fiscal year in which the payment is made (the "Appropriated Amount").

Section 11.4 (1)(c) of the *Financial Administration Act* provides that the Subscription Payment shall not be made unless a person authorized under that section certifies that OPG is eligible for or entitled to the Subscription Payment.

I **[Minister of Energy, or Deputy Minister of Energy, or a person ~~authorised~~ authorized by either of them under FAA s. 11.4]** hereby certify that

i) There is a sufficient Appropriated Amount from which to make the Subscription Payment, and

ii) OPG is ~~eligible for or~~ entitled to the Subscription Payment.

Dated:

_____

name:

title:



DRAFT

**Formatted:** Indent: First line: 0"

**Formatted:** List Paragraph, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 1"

**Formatted:** Font: (Default) Times New Roman, 12 pt

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan; Carlos Yep; James Devine; Mike Manning |
| **Cc:** | Ronald Kwan |
| **Subject:** | FW: OFHP Business Issues |
| **Date:** | Friday, September 29, 2017 2:10:08 PM |
| **Attachments:** | 2017 09 29 OFHP Business Issues v01.pptx |

Pls. take a look. Happy to consolidate comments. At a quick glance, there are sub debt slide and mgmt fee slide.

**From:** Montgomery, Kaitlin (MOF) [mailto:Kaitlin.Montgomery@ontario.ca]
**Sent:** Friday, September 29, 2017 1:27 PM
**To:** Hilary Cox (ENE) ; Dan Shear (ENERGY) ; Tom McKinlay (MAG) ; John Kim ; Robin Lewis (MOF)
**Cc:** Keley Katona (ENERGY)
**Subject:** OFHP Business Issues

Hi everyone,

We're pulling together a product summarizing all the outstanding business issues including status/next steps with respect to the Fair Hydro Plan for the Minister of Energy

I've attempted to fill out as much as possible (Hilary there's a couple placeholder slides where I had no content but I think those would be for ESP? Please correct me if I'm wrong).

Each of you are involved in various aspects of these issues so I'm hoping you can take a look to ensure we're accurately capturing each item.

I'm away next week but if you could provide your suggested edits to Keley by next Wednesday we would appreciate it. The briefing has not yet been set up so we will keep you posted if that timing needs to change.

Thanks in advance,

Kaitlin

# OFHP Business Issues

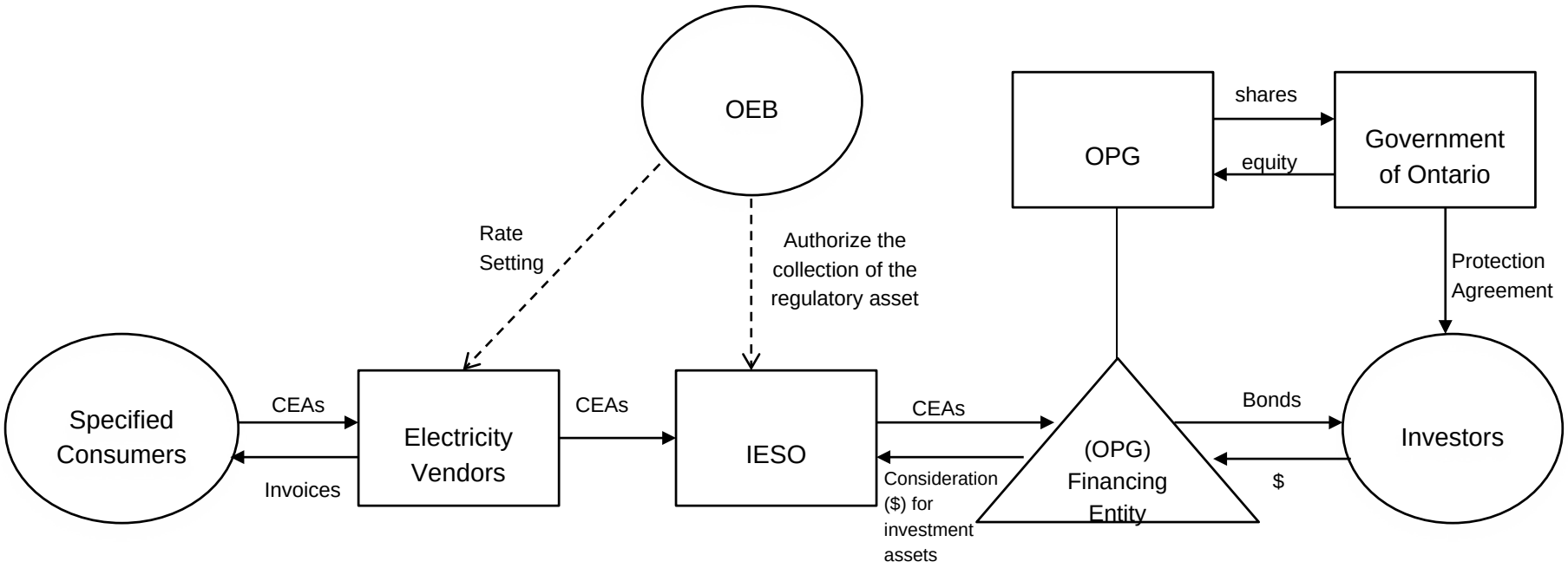
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - The financing entity will purchase the regulatory asset, effectively financing the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including:
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
    - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Province has agreed to provide a protection agreement that supports the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would take over the funding obligations of the Financing Entity, including:
    - Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
    - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
    - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
    - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access US market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
    - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
    - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its accounting objective of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 10 basis points on monthly funding obligation when the annual funding obligation is less than $10B, and 8 basis points on the monthly funding obligation when the annual funding obligation is greater than $10B.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust)
- The Trust would be subject to tax under the Income Tax Act (Canada) and the Ontario Taxation Act, 2007
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG
  - Subco, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down its debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the Ministry of Finance plans to bring forward a proposed Minister of Finance's regulation under the *Electricity Act* , 1998 that would exempt Subco from paying PILs on income received as beneficiary of the Trust
- The Ministry of Finance will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financial Services Manager

**Next Steps:**

- Draft letter from the Minister of Finance to OPG is in development that will provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which will be brought forward in the Fall

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Mike Manning; Carlos Yep; James Devine |
| **Subject:** | FW: OFHP Business Issues |
| **Date:** | Friday, September 15, 2017 1:22:42 PM |
| **Attachments:** | 2017 09 11 OFHP Outstanding Business Issues v02.pptx |

Could you have a look and let me know if any comments?

Thanks,

John

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]

**Sent:** Friday, September 15, 2017 11:54 AM

**To:** McKinlay, Tom (ENERGY) ; John Kim ; Robin Lewis (MOF)

**Cc:** Montgomery, Kaitlin (MOF)

**Subject:** OFHP Business Issues

Hi,

ENERGY's MO has requested a few high-level slides on some specific business issues that are outstanding related to the OFHP. We're hoping you can take a quick look at the attached and let us know if you have any comments by end of day today.

Thanks,

Keley

**Keley Katona**

Director | Investment and Governance Branch

Government Business Enterprise Division | Ministry of Finance

Work: 416-325-1539 | Cell: 416-727-5696

E-mail: keley.katona@ontario.ca

7th Floor, 375 University Ave, Toronto, ON

# OFHP Business Issues

DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - The Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including:
  - A regulation to minimize Payments in Lieu (PILs) of taxes by the financing entity
  - An equity injection by the Province to OPG that OPG would use to lend to the financing entity
  - A subordinated debt agreement related to OPG lending to the financing entity

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as financial services manager will be a Trust
- The Trust would be subject to tax under the Income Tax Act (Canada) (ITA) and the Ontario Taxation Act, 2007 (TA)
- The beneficiary of the Trust will be a corporation that will be directly or indirectly wholly-owned by OPG
  - The corporation, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down the stranded debt of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the Province plans to bring forward a regulation under the *Electricity Act* that would exempt the corporation from paying PILs
- The Province will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financing Entity

**Next Steps:**

- Draft letter from the Minister of Finance to OPG in development that will provide comfort that the financing entity will be exempt from PILs
- The Ministry of Finance is working with OPG on a draft regulation which will be brought forward in the Fall

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to keep its capital structure in line, and will require flexibility in order to issue shares as needed
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year
  - On a monthly/quarterly basis, OPG will send a notice of share subscription to the Province, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG is seeking Board approval on September 29th
- The Province is working with appropriate parties internally to ensure a mechanism is in place to provide the equity injection to OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement which outlines the terms of the subordinated debt
- Interest rates on the subordinated debt will be established as follows:
  - During the Trust short term financing period when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate.

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement which is tracking to be finalized by the end of September

**From:** John Kim
**To:** Ken Kandeepan; Carlos Yep; James Devine
**Cc:** Ronald Kwan; Mike Manning; Gavin He
**Subject:** FW: OFHP Business Issues
**Date:** Monday, October 30, 2017 11:48:12 AM
**Attachments:** 2017 10 30 OFHP Business Issues v02.pptx

---

Pls. take a look and send any suggested edits/comments.
Thanks,
John

---

**From:** Montgomery, Kaitlin (MOF) [mailto:Kaitlin.Montgomery@ontario.ca]
**Sent:** Monday, October 30, 2017 11:46 AM
**To:** Hilary Cox (ENE) ; Dan Shear (ENERGY) ; Thouin, Alena (ENERGY) ; John Kim ; Robin Lewis (MOF) ; Sud, Manu (ENERGY)
**Cc:** Keley Katona (ENERGY) ; Kuppuswami, Kritika (MOF)
**Subject:** RE: OFHP Business Issues

Hi everyone,
This product was put on hold but we've now been asked to refresh it.
Could you please take a look and provide any comments midday tomorrow.
Hilary – I think you guys would lead slides 6/8 but please let me know if that's not the case.
Thanks in advance,
Kaitlin

---

**From:** Montgomery, Kaitlin (MOF)
**Sent:** September 29, 2017 1:27 PM
**To:** Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Lewis, Robin (MOF) <Robin.Lewis@ontario.ca>
**Cc:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** OFHP Business Issues

Hi everyone,
We're pulling together a product summarizing all the outstanding business issues including status/next steps with respect to the Fair Hydro Plan for the Minister of Energy
I've attempted to fill out as much as possible (Hilary there's a couple placeholder slides where I had no content but I think those would be for ESP? Please correct me if I'm wrong).
Each of you are involved in various aspects of these issues so I'm hoping you can take a look to ensure we're accurately capturing each item.
I'm away next week but if you could provide your suggested edits to Keley by next Wednesday we would appreciate it. The briefing has not yet been set up so we will keep you posted if that timing needs to change.
Thanks in advance,
Kaitlin

# OFHP Business Issues

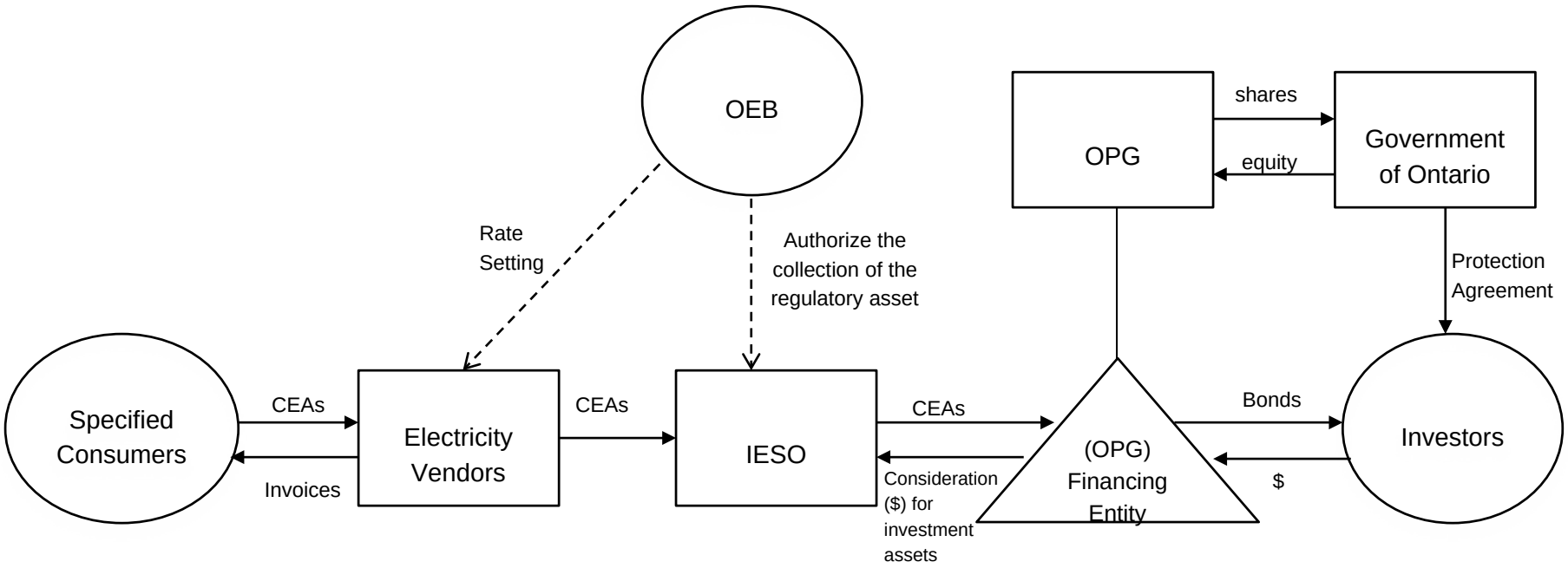
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - A financing entity purchasing the regulatory asset would effectively finance the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
  - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Ministers of Energy and Finance have the authority to negotiate and enter into a protection agreement that supports the Financing Entity and prospective debt holders such that the Province would take over the funding obligations of the Financing Entity, under certain circumstances, including
  - Actions of the Legislative Assembly that undermine the financing arrangement; i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
  - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
  - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
  - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access the U.S. market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
  - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
  - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its objectives of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 7.5 basis points on monthly funding obligation. The base fee will be independently reviewed in 2018.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches. The variable fee in any one year will be no more than 5 basis points of the net annual borrowing and can be no less than -5 basis of the net annual borrowing. If the variable fee is a negative amount, such amount will be deducted from the base fee in the following calendar year in twelve equal monthly payments
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust).
- The Trust would be subject to tax under the *Income Tax Act* (Canada) and the Ontario *Taxation Act, 2007*.
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG.
  - Subco, as a subsidiary of OPG, would be exempt from federal and provincial corporate taxes payable by private sector companies. Instead, Subco would be subject to tax under the payments in lieu of taxes (PILs) regime under the *Electricity Act, 1998 (EA),* and would pay PILs to the Ontario Electricity Financial Corporation (OEFC);
  - PILs are used by the OEFC to help pay down ~~its~~ debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro.
- In order to mitigate the cost to ratepayers, a recommendation will be made to the Minister of Finance ~~to~~ to make a regulation under the EA that would exempt Subco from PILs on income received by Subco as beneficiary of the Trust.
- Should OPG, as Financial Services Manager, establish other financing entities in the future for purposes of the OFHP, the Ministry of Finance will ~~also~~ consider making similar recommendations to the Minister of Finance.

**Next Steps:**

- Letter to OPG provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which is intended to be made by the Minister of Finance in the Fall of 2017.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Cc:** | Gadi Mayman; Usman Zahid |
| **Subject:** | FW: OFHP Timeline |
| **Date:** | Monday, September 25, 2017 10:42:50 AM |
| **Attachments:** | 2017 09 23 OFHP Timeline consolidated.pptx |

Good morning,

FYI, attached is a timeline for the OFHP that Ministry of Energy put together for their MO for use at TB today. Still awaiting confirmation from TBS and Energy on the choreography for today (i.e., who's in the room and who's in the anteroom).

Thanks, Anna

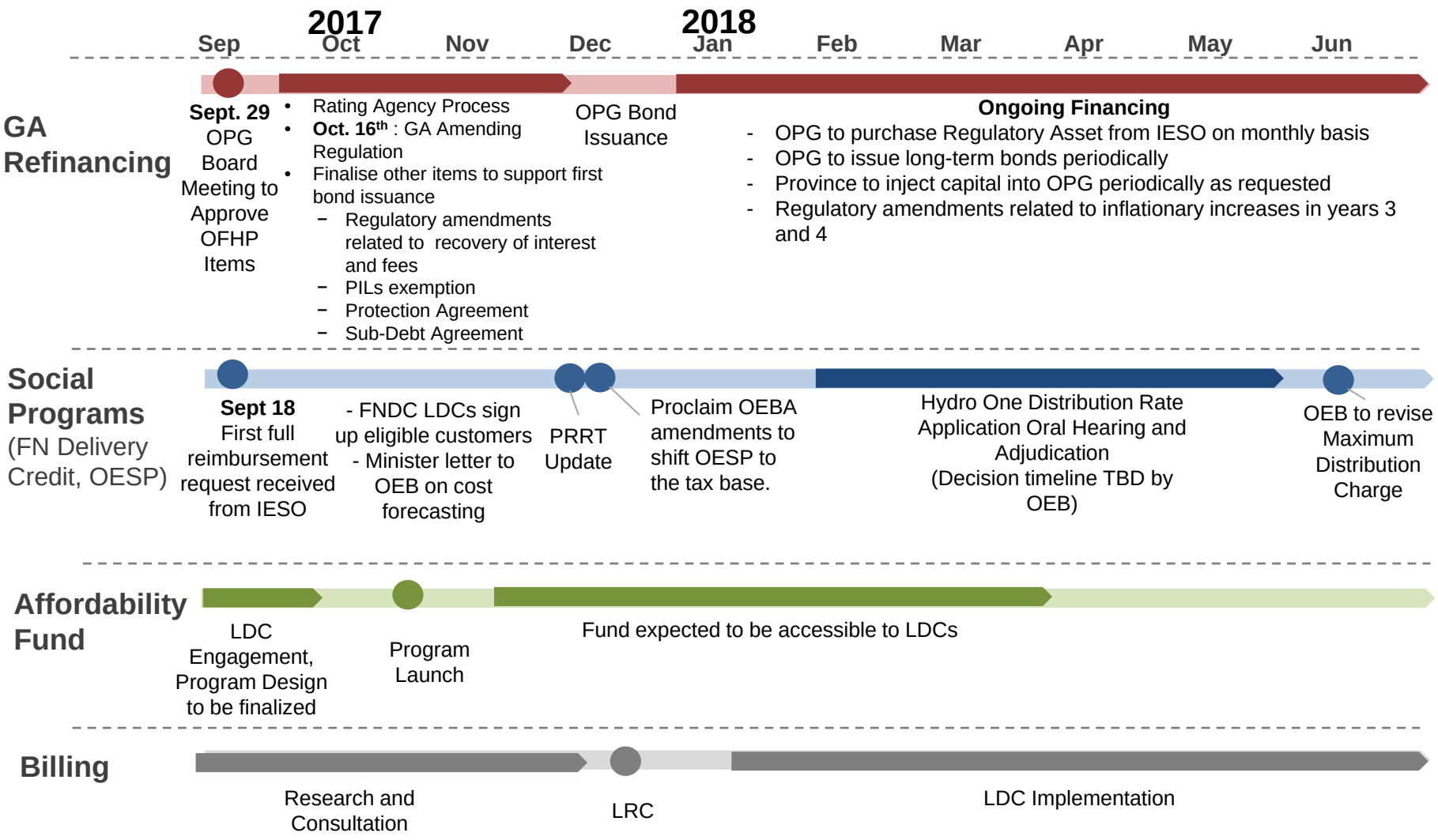
**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Monday, September 25, 2017 9:36 AM
**To:** Anna Strathy
**Cc:** Cengarle, John (MOF)
**Subject:** OFHP Timeline

Hi Anna,

Just flagging this for you. ENERGY's MO had asked for a timeline they might use at TB today for the OFHP item. It was meant to be high level.

Keley

# OFHP Key Milestones



**From:** John Kim
**To:** Ken Kandeepan; Carlos Yep
**Cc:** Mike Manning; James Devine; Gavin He; Bruno Amara
**Subject:** FW: OFHP fees reg
**Date:** Wednesday, October 11, 2017 2:27:33 PM

---

Hi Ken, Carlos,
Happy to play the consolidator role. I sense Energy would like comments fairly quickly. I will think about the OEB-related components to the questions below.
Thanks,
John

---

**From:** Cayley, Daniel (ENERGY) [mailto:Daniel.Cayley@ontario.ca]
**Sent:** Wednesday, October 11, 2017 2:04 PM
**To:** John Kim
**Cc:** Tim Christie (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or**

**management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

)llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan; Carlos Yep |
| **Cc:** | Mike Manning; James Devine; Anna Strathy |
| **Subject:** | FW: OFHP fees reg |
| **Date:** | Thursday, October 12, 2017 5:27:02 PM |
| **Attachments:** | reg2017.0512.e04 with drafting instrns for leg counsel v4.docx |

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim
**Cc:** Tim Christie (ENERGY) ; Daniel Cayley (ENERGY) ; Montgomery, Kaitlin (MOF)
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have

any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

**CONFIDENTIAL**
Until filed with the
Registrar of Regulations

**REG2017.0512.e**
**4-TP**

**ONTARIO REGULATION**

made under the

**ONTARIO FAIR HYDRO PLAN ACT, 2017**

**FEES**

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"market comparable fees" means fees, expressed as a yearly percentage rate, charged by asset managers [or management and financial service providers] in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD for leg counsel: I am trying to get more clarity around "management and financial service providers". I am not sure whether the intent is to say "management service providers or financial service providers". If the intent is to refer to a "management and financial service provider", I will try to ascertain whether this is a well-understood industry "term of art" (since based on a brief search it did not appear to be).]**

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other structured investment funds, hedge funds and other similar structured funds,

(b) the scope of the services provided,

**Commented [DS1]:** NTD for OEB: Is "specified by" the right way to say this?

**Commented [DS2]:** NTD for ESP/MoF: Should there be a "temporal" connection too? E.g. "… services that are similar to, and provided at a time that is similar to the time the services are provided by, the FSM …".

(c) the level of the services provided, and

(d) the dollar amount of assets under management;

"funding tranche" means an ~~specific~~ issuance of ~~debt by a financing entity and constitutes all or part of a~~ funding obligations of a particular series, class or type that have the same terms;

"FSM services" means services provided by the Financial Services Manager to financing entities in relation to the management and administration of the financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

"market comparable forecast interest rates" means, in relation to a potential funding tranche described in the submissions mentioned in subsection 6 (3) or 6 (4), interest rates charged by lenders in Canada **[at the time the submissions are made]** for a debt obligation that,

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

**Commented [DS3]:** NTD for OPG/MoF: Should this contemplate "posted" rates rather than rates "charged by"?

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities.

**Forecast interest rate**

**1.1** For the purposes of this Regulation, the Financial Services Manager shall determine the forecast interest rate for a funding tranche that forms part of the net annual funding obligation for a year, by taking into account the following factors:

1. The interest rate for debt of or guaranteed by the Government of Ontario with a term or duration that is comparable to the term or duration of the funding tranche.
**[NTD for leg counsel: We are confirming whether we need to refer to both "term" and "duration" here and in 2 ii below (and if yes, how these terms mean different things).]**

2. The estimated credit spread, relative to the interest rate described in paragraph 1, for a debt obligation that,

   i. has a principal amount that is comparable to the principal amount of the funding tranche,

   ii. has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

   iii. is based on a type of instrument that is comparable to the type of instrument of the funding tranche, ~~and~~

   iv. has payment rights that are similar to the payment rights of the funding tranche, and

   v. is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche.

3. Anticipated fees and commissions expected to be payable in connection with the issuance of the funding tranche.

**Commented [DS4]:** NTD for OPG/MoF: Even if the term is the same length, would the commencement date of the term not also be relevant?

**Commented [DS5]:** NTD for OPG: Energy Policy is asking whether the fees and commissions are relevant to the determination of the forecast interest rate for the tranche, given that they are recoverable by the FSM under s. 7(2) below.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities ~~in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by~~for FSM services provided to the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3] and a variable fee calculated under section [6].

(3) For the purposes of subsection 19 (3) of the Act, fees may be established and charged by the Financial Services Manager to financing entities for the recovery of costs and expenditures, as provided for in section [7].

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation.

**Base fee**

**3.** (1) Subject to sections [5.1] and [5.2], the Financial Services Manager shall establish the proposed base fee for a month as follows:

1. Determine the amount that is 0.075 per cent of the average monthly funding obligation for the preceding month.

2. Divide the amount determined under paragraph 1 by 12.

(2) The first month in respect of which the base fee may be established is ~~July~~ November 2017.

[OLC Note: Just need to confirm -- will there be an average monthly funding obligation for the month of June 2017? If not, it would not be possible to apply this method in respect of July 2017.] **[NTD for leg counsel: The first funding obligation may not be incurred until around November 2017. The base fee for a month would be zero if there was no average monthly funding obligation for the preceding month (i.e. if it was zero).]**

(3) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of the period from November 1, 2017 to December 31, 2018 no later than October 31, 2017.

(4) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the base fee would be charged.

**[NTD for leg counsel: Let's move the submission provisions (other than the amendment submission provision) from section 9 to the respective sections that deal with the fee in question. As you will see in s. 6 and 7 below, the submission process will be different for each of the types of fees (base, variable, and costs/expenditures).]**

**[Further NTD for leg counsel: The Board's review of the base fee for the period from July 1, 2017 to December 31, 2018 will be limited to ensuring that the base fee is calculated correctly (i.e. calculated in accordance with ss. 5 (3)).]**

**Commented [DS6]:** NTD for OPG/OEB: The policy instruction is to provide that costs and expenditures are recoverable so long as they relate to the matters described in s. 7.1(1), and that the Board review the costs and expenditures from that perspective.

In order to implement this instruction and give the Board the authority to review, we have to deem the costs and expenditures to be fees.

**Commented [DS7]:** NTD for OPG/OEB: Ss. 19(4) of the OFHPA requires the Board to approve fees.

**Board review of base fee**

**5.1** (1) The Board shall refuse to approve the proposed base fee mentioned in subsection 5 (3) if the Board is of the view that the proposed base fee was not established in accordance with subsection 3 (1).

(2) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal; and

(b) the Financial Services Manager shall submit to the Board a revised proposed base fee that is established in accordance with subsection 3 (1)

**[NTD for leg counsel: If the Board does not refuse to approve a proposed base fee under ss. (1) or (3), then we should explicitly say that the Board will approve the proposed base fee. Please tweak ss. 5.1 (1) and (3) accordingly.]**

(3) The Board may refuse to approve a proposed base fee mentioned in subsection 5 (4) if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees.

[OLC Note: Should this section only apply starting January 1, 2019?]

[OLC Note: Are you sure that this is the only reason why the Board can refuse the proposed base fee?]

**[NTD for leg counsel: In response to your notes, for the proposed base fee applicable in 2019 and beyond, the only basis upon with the Board can withhold approval is inconsistency with market comparable fees. For the proposed base fee applicable July 1 – Dec31/17 and Jan1 – Dec31/18, the Board can only withhold approval if the base fee is inconsistent with the formula in s. 3(1).]**

Commented [DS8]: Explanatory note for OEB: The reg-making powers in s. 19 of the OFHPA don't appear to provide the same ability to impose on the Board (by reg.) the base fee as with the OESP reg-making powers in ss. 79.2(6) of the OEBA.

(~~1.1~~4) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any**;** and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including details concerning the market comparable fees that the Financial Services Manager considered.

**(5) [NTD for leg counsel: Please add a provision that says that the process (i.e. the process outlined in ss. (1) and (2) above, or (3) and (4) above) will be repeated until the Board approves a proposed base fee for the year in question, unless you are of the view that that is already clearly implicit in those provisions.]**

**(6) [NTD for leg counsel: Please add a provision that says that:**

- **Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if any).**

- **Once the new proposed base fee is approved by the Board, the FSM shall make a "retrospective" adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be "retrospectively" applied to the whole period. By "period" I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the Financial Services Manager shall establish the variable fee for a year after 2017 as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite those circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

(3) The Financial Services Manager shall make submissions to the Board in respect of the **[variable fee proposed to be charged in 2018, including the]** forecast interest rates for the funding tranches anticipated to be issued in 2018, no later than **[October 31, 2017]**.

Commented [DS9]: NTD for OPG/OEB: Is this wording appropriate?

(4) The Financial Services Manager shall make submissions to the Board in respect of the variable fee proposed to be charged in any year after 2018, including the forecast interest rates for the funding tranches anticipated to be issued in the year, no later than 120 days before the beginning of the year.

(5) If the Financial Services Manager has not submitted a forecast interest rate under subsection (3) or (4) for a funding tranche that will be issued in a year after 2017, the Board may require the Financial Services Manager to submit a proposed forecast interest rate for the funding tranche **[and may specify the time by which the submission must be made],** or the Board may determine the funding tranche taking into consideration the forecast interest rates submitted by the Financial Services Manager for the year under subsection (3) or (4).

Commented [DS10]: NTD for OPG: The policy instruction is to not require the Board to apply linear interpolation to come up with a forecast interest rate, because the approach would be too prescriptive for this fairly limited subset of total fees.

**Board review of variable fee**

**6.1** (1) The Board may refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of subsection 6 (1) is inconsistent with ~~[~~market comparable forecast interest rates~~]~~.

[OLC Note: We provide an explanation for how to determine "market comparable fees" but we say nothing about how to determine "market comparable forecast interest rates". Please instruct.]

**[NTD for leg counsel: We have created a new defined term "market comparable forecast interest rates" to address this.]**

[OLC Note: Are you sure this is the only reason why the Board may refuse the proposed variable fee?] **[NTD for leg counsel: Yes.]**

(2) If the Board refuses to approve the proposed variable fee,

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was inconsistent with [market comparable forecast interest rates]; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with [market comparable forecast interest rates].

**Fees for costs and expenditures**

**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred by the Financial Services Manager,

(a) on behalf of the financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(b) under a management agreement between the Financial Services Manager and the financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Direct costs of the Financial Services Manager for employees who are dedicated to providing FSM services to financing entities.

~~(3) The costs and expenditures referred to in subsection (1) shall not include any overhead costs of the Financial Services Manager, including [….].~~
~~[OLC Note: The phrase "overhead costs" seems a bit vague. Examples would help.]~~

**Board review of fees for costs, expenditures**

**7.1** (1) The Board may refuse to approve a proposed fee for costs and expenditures or a portion of a proposed fee for costs and expenditures if the Board is of the view that the proposed fee is in respect of costs and expenditures that were not incurred in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities.

(2) If the Board refuses to approve the proposed fee or a portion of the proposed fee, the amount not approved shall not be payable to the Financial Services Manager and the associated costs and expenditures shall not be recoverable by the Financial Services Manager from the financing entity.

~~(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the proposed fee; and~~

~~(b) the Financial Services Manager shall submit to the Board,~~

~~(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and~~

~~(ii) a description of how the proposed fee is in respect of costs and expenditures that were incurred in relation to the management and administration of financing entities and the investment asset.~~

**Charging of fees**

**8.** (1) Subject to sections [5.1], [6.1] and [7.1], in charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month;

**Commented [DS11]:** NTD: Need to specify when the base fee is payable.

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month; and

(c) the fee for costs and expenditures for a month to be payable within [x] days after the end of the month.

**Commented [DS12]:** NTD: Need to specify when the fee for costs and expenditures is payable.

(2) If the variable fee for a year is a negative amount, it shall be deducted in twelve equal monthly instalments from the base fee payable in the following year.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

Commented [DS13]: NTD: Should this be based on the average of the opening and closing balances for the applicable period (e.g. year)?

(4) For the purposes of determining the average principal amount of funding obligations under subsection (3), the formula set out in subsection 1 (2) applies with necessary modifications.
[OLC Note: Please confirm that this works.]

**Submissions to Board**

**9.1** ~~(1) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in 2018 no later than October 31, 2017.~~

Formatted: section-e

~~(2) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the fees would be charged.~~

~~(3)~~ The Financial Services Manager may, no more frequently than once in any consecutive twelve month period, make submissions to the Board to amend any base fee or variable fee~~s~~ approved by the Board, and the provisions of section [5.1]. [6.1] or [7.1], as applicable, apply in respect of the submissions.

**Board approval, general**

**10.** (1) For the purpose of determining whether to approve a proposed fee, the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee.

(2) For the purpose of determining whether to approve a proposed base fee or variable fee, the Board may consider, as it determines to be appropriate, the advice provided by third party consultants and experts. **[NTD for leg counsel: We want to retain this provision, but the Board noted that they already have this ability without needing to specifically include it here. The Board flagged the risk of an adverse interpretation in other contexts where the Board is not given explicit statutory authority to consider advice of third party consultants and experts. Can we word this ss. 10(2) in such a way that it is just "for greater clarity"?]**

**Commencement**

**11. This Regulation comes into force on the day it is filed.**

**From:** Mike Manning
**To:** Carlos Yep
**Subject:** FW: Proposed Watay Term Sheet
**Date:** Wednesday, September 06, 2017 1:22:57 PM

---

**From:** Gadi Mayman
**Sent:** Friday, September 01, 2017 11:22 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Emily Kerr <Emily.Kerr@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Re: Proposed Watay Term Sheet

Thanks. That's a very good note, but I'm concerned that in an effort to be helpful to getting an important project through, we may not be as clear on the risks as we should be, and are underestimating the rate that would have to be charged on the loan (or overstating what our spread is).

Where did the 2.80% long term Ontario rate come from? Our 10-year rate is currently about 2.6% before fees and our 20 and 30-year rates are about 3.10%, so this looks like a pretty low rate given the tenor of the proposed bond.

Also this is an amortizing structure , which in the marketplace usually has at least a 25 basis point premium, and in Alan's proposal that I saw last week, he had included an option to prepay at any time without a penalty, which is a highly expensive option (ask Alan what the Bank would charge him for that feature on a 5-year mortgage, never mind a 40-year debt instrument).

A further point is that we wouldn't borrow the full $1.5 billion today, as we'd borrow and on-lend over a number of years as the project is built, so this is a future starting loan which also has a number of basis points added to it if we were to hedge the rate as soon as it would be approved be TB and agreed to with Watay.

Another question that I have is whether we'd have any additional liability or risk if the project goes over budget and needs more money - who comes up with that? Does our $1.5 billion potentially grow? What about the senior debt? I assume that this will, to be a proper financing structure, come with a lower yield than what we'd be charging to be subordinated to it, but that it would carry less risk in the case of a cost overrun on the project.

Put all that together and our spread would be considerably below the 150 basis points indicated, and the PV of the gain that we would get if the Federal government keeps making these appropriations annually for the next 40-years would be considerably the amount included in the note. Also, and this is an accounting question, I'm assuming that any provision that we'd have to take would be in this fiscal year, while the gains on the loan rate versus our cost of funds would be on an annual basis as they're realized, so I think even if we got a true spread of 150 basis points by adding in all of what I've suggested above and charging a rate that would likely be well above 5%, putting forward a big amount like $300-400 million may give TB, or other decision makers, a false sense of comfort in that that may think that we can take a provision of that size and be fiscally neutral, so we should make the timing difference on when gains and the provision would hit the Province's books.

As you can see, I'm very nervous about this structure, the potential for cost overruns and the viability of depending on the next dozen or so elected Federal governments continuing to make their annual appropriations to keep us whole. I understand the importance of this project and the need to ensure that it goes forward, but I'm very leery of the transfer of risk from the Federal government to the Ontario government. I understand their desire to not take the fiscal hit up front, but why should we take some, or much, of it in their place? Why can't the Feds, or one of their agencies like BDC, provide the loan, or a loan guarantee, like they have recently done for Nalcor in considerably larger size?

One last point that I think should be included in any note that goes up to decision makers, so they're aware of the Ontario government's full involvement in this project, is our guarantee under the ALGP, which means that we're also backing the equity injection, not just the $1.5 billion subordinated loan.

Thanks,
Gadi

Hi Gadi,
Pls. see attached draft note on the Watay term sheet, drafted by Emily's branch. Will share with Mike as we have a few questions on the spread.
We are checking with OPCD on the TBC question.
Thanks,
John

Begin forwarded message:

**From:** "Alan Hibben" <alan.hibben@rogers.com>
**Date:** August 30, 2017 at 4:28:13 PM EDT
**To:** "'Kwan, Ronald \(OFA\)'" <Ronald.Kwan@ofina.on.ca>, <karen.hughes@ontario.ca>, "'Veinot, Cindy \(TBS\)'" <Cindy.Veinot@ontario.ca>
**Cc:** <serge.imbrogno@ontario.ca>
**Subject: FW: Proposed Watay Term Sheet**

Please let me know what the next steps are here.
Energy is starting to draft some form of paper for TB, but I don't want them to go far until you think this is going to work.

---

**From:** Alan Hibben [mailto:alan.hibben@rogers.com]
**Sent:** August 28, 2017 1:54 PM
**To:** 'Laughton, Patrick (TBS)' <Patrick.Laughton@ontario.ca>
**Cc:** 'Strathy, Anna (OFA)' <Anna.Strathy@ofina.on.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'He, Gavin (OFA)' <Gavin.He@ofina.on.ca>; 'Kwan, Ronald (OFA)' <Ronald.Kwan@ofina.on.ca>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Kandeepan, Ken (OFA)' <Ken.Kandeepan@ofina.on.ca>; 'Arbabzadeh, Nina (TBS)' <Nina.Arbabzadeh@ontario.ca>; 'Nakahara, Ken (ENERGY)' <Ken.Nakahara@ontario.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'karen.hughes@ontario.ca' <karen.hughes@ontario.ca>; 'serge.imbrogno@ontario.ca' <serge.imbrogno@ontario.ca>; Andrew Teliszewsky (andrew.teliszewsky@ontario.ca) <andrew.teliszewsky@ontario.ca>; Stephanie Aldersley (stephanie.aldersley@ieso.ca) <stephanie.aldersley@ieso.ca>; 'Nakahara, Ken (ENERGY)' <Ken.Nakahara@ontario.ca>; 'Calwell, Carolyn (ENERGY/MEDEI/MRI)' <Carolyn.Calwell@ontario.ca>
**Subject:** Proposed Watay Term Sheet
As discussed on our telephone meeting and at my in person meeting with the ADM, Deputy and COS of Energy this morning, I attach a draft of a potential term sheet that could be considered by Ontario for the Watay Northern Grid Project.
Happy to discuss at your convenience.

Alan R. Hibben
**Shakerhill Partners Ltd.**
Alan.hibben@rogers.com
416-417-5286 (cell)
416-901-6440 (home)
705-466-2652 (farm)
Please note that my assistant
should be copied on all meeting requests:
JJ Barnett
jjbarnett@morpheusworks.ca
416-668-2663

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Cc:** | Gavin He |
| **Subject:** | FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Thursday, September 21, 2017 2:16:05 PM |
| **Attachments:** | 4 RAN MOF ENERGY -Provincial Protection Agreement v6.doc |

Ken, Mike, Ron,

The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.

The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.

I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the final agenda.

Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Thursday, September 21, 2017 2:13 PM

**To:** Anthony Reiss (MGS) ; Pratima Gounden (ENERGY)

**Cc:** Veinot, Cindy (TBS) ; Hosick, Sarah (TBS) ; Anna Strathy ; Ronald Kwan ; Afshin Malekzadeh (MOHLTC) ; Chris Skubel (MGS) ; Indira Komal (MCSCS) ; Lenna Wichenko (MCSCS)

**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.

Thanks in advance,

James Strang
416-327-2071

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| | **Ministry:** | Energy & Finance |
| | **Meeting Date:** | September 25, 2017 |
| | **Agenda Class:** | Discussion (In-Camera) |
| | **Last reviewed by:** ENERGY TB/MBC May 9, 2017 | **Tracking to:** Fast Track Cabinet (September 27, 2017) |

| **SUBMISSION TITLE:** | Provincial Protection Agreement<br>(Supports Ontario's Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. (OPG). | *Approve* |
| Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Fair Hydro Plan Act, 2017(FHPA).*<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council (OIC), in accordance with section 5 of the *Fair Hydro Plan Act, 2017 (FHPA)* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |
| Recommended program base | 0.0 | 0.0 | 0.0 |
| Offset Recommended | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the *Fair Hydro Plan Act, 2017*, (FHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected from consumers.

- IESO will incur a cash shortfall, as the amounts collected from the consumers of electricity (collected by local distribution companies) will be reduced, but the amounts paid to the generators of electricity will remain at the market and/or contractual rates.

The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

The OFHPA provides for IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the FHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the FHPA) will he the right, but not the obligation to purchase the regulatory asset, effectively financing the shortfall generated by the reduction in amounts collected from eligible ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity will borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets.

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this through Provincial assurance and guarantee provisions was recommended in a May 2017 TB/MBC item reviewing proposed FHPA.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance and external advisors recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the FHPA/related regulations or new legislation that materially and adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid; and
- A change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that materially and adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations.

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the contingent liability would increase over the duration of Ontario's Fair Hydro Plan (OFHP) and peak at approximately $20B of debt (final cost forecasts TBC), including principal and accumulated interest.

- In the event the protection agreement is triggered, the Province's net debt would be expected to

increase by an amount equal to the contingent liability for the debt outstanding at that point in time.

- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments related to derivatives agreements and for service providers that the Province will be required to make. The fiscal impact of the increased interest payments will depend on the circumstances of the change (e.g. will the amounts continue to be recovered from the ratepayers through the clean energy adjustment as provided for under the FHPA).

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements (e.g. the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt) and to service providers.

- The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.

This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time, and the Province may incur an expense equal to the amount of the debt.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. The worst case scenario would be the Province assuming the debt at its peak at which point interest on debt (IOD) expense could increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required and may require a change in legislation.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not.

- For example, if the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments, albeit not necessarily in the same fiscal period; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense as well as any continued impact of reduced electricity rates would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.

- Debt incurred to benefit the ratepayer could become the responsibility of the taxpayer.

TBS staff note the protection agreement, assuming the Board proceeds with the request, would be approved prior to the commercial agreements being finalized. Also from an accounting perspective, previously provided opinions/memos from KPMG re: IESO and EY re: OPG have yet to be updated.

*Implementation*
The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the two Ministers seeking the OIC in the form attached to the final TB/MBC Submission.

The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

MOF Legal indicates the intention is that the protection agreement signed by the two Ministers would apply to all subsequent agreements entered into by the Financing Entity subject to compliance with the terms and conditions set out in the protection agreement. A section 28 approval of the protection agreement should cover these subsequent agreements. This may change as the protection agreement and the terms and conditions of the process have not been determined by the Ministers.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 21, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE

Approve the Ministries plan for implementing provisions of the *Fair Hydro Plan Act, 2017 (FHPA)* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

In this regard,

i) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet included in the TB/MBC Submission, and subject to such revisions that the two ministers acting together may determine.

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the FHPA, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

iii) Direct the Ministry to report back to TB/MBC with final accounting/legal/financial risk opinions.

# APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM *FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

# APPENDIX D: NON-BINDING TERM SHEET

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); |

| | |
|---|---|
| | (5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

# APPENDIX F: RISK UPDATE

The current submission, Provincial Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" as part of risk mitigating strategy.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Subject:** FW: Provincial Protection Agreement - Dealer Comments
**Date:** Friday, September 15, 2017 12:24:28 PM

---

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John - TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
5. The requirement that the change of law have a "material" adverse effect is not acceptable.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against

the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Gadi Mayman; Gavin He |
| **Subject:** | FW: Provincial Protection Agreement - Final |
| **Date:** | Tuesday, September 19, 2017 1:50:21 PM |
| **Attachments:** | TB20 Submission_Provincial Protection Agreement_V9_clean.pdf<br>TB20 Submission_Provincial Protection Agreement_V9_track_change.pdf |

FYI, final TB submission package attached. The DM/Minister briefing has been scheduled for Thursday morning at 9am; however, I'm looking to have it moved to today or tomorrow to accommodate Gadi's schedule. I'll be in touch if we are successful in rescheduling.

**From:** Anna Strathy
**Sent:** Tuesday, September 19, 2017 1:46 PM
**To:** Jonathan Tekle (CAB) ; Keley Katona (ENERGY) ; Anthony Reiss (MGS)
**Cc:** David McLean (MOF) ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF)
**Subject:** Provincial Protection Agreement - Final

Jonathan, Keley, Anthony,

Please find attached the final TB submission for the Provincial Protection Agreement tracking to TB/MBC on September 25. The first attachment (v9_clean) includes the submission, term sheet (in appendix), OIC, s. 28 and slide deck.

I'm bringing the hard copy package over to Legal for signature and then will drop it off to Jonathan. Note, Keley will share with Energy. A track change version (from the version the Minister of Energy already signed) is attached for Keley's reference.

Anthony, I take it you will be bringing the TB20 form to the briefing for the Minister to sign?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

# PROVINCIAL PROTECTION AND ASSURANCES AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; and
- Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.

In the event the protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) to enter into a guarantee or indemnity that would increase the contingent liabilities of Ontario. The Minister of Finance has given Section 28 approval for the Minister of Energy, together with the Minister of Finance to recommend the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.

- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017*, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

# APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Ontario

**Executive Council of Ontario**
**Order in Council**

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

**Conseil exécutif de l'Ontario**
**Décret**

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "Act"), the Lieutenant Governor in Council may by order authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest as described under the Act;

AND WHEREAS pursuant to subsection 22(2) of the Act, Ontario Power Generation Inc. as financial services manager, may establish or cause to be established one or more financing entities (a "Financing Entity") that may incur funding obligations in connection with investment interests;

AND WHEREAS it is considered desirable to authorize the Minister of Energy and the Minister of Finance to agree to guarantee or indemnify debts, obligations, securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity;

NOW THEREFORE:

1. Pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017*, the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, are authorized to enter into one or more agreements to guarantee or indemnify the debts, obligations securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity.

2. The Minister of Energy and the Minister of Finance, acting together on behalf of Ontario are authorized to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee and indemnity authorized under paragraph 1 of this Order.

- - - - - - -

ATTENDU QU'en vertu du paragraphe 5 (3) de la *Loi de 2017 sur le Plan ontarien pour des frais d'électricité équitables* (la « Loi »), le lieutenant-gouverneur en conseil peut, par décret, autoriser le ministre de l'Énergie et le ministre des Finances, agissant de concert au nom de la province, à accepter de garantir ou de rembourser les dettes, obligations, valeurs mobilières ou engagements associés à une participation d'investissement et prévus dans la Loi;

ATTENDU QU'en vertu du paragraphe 22 (2) de la Loi, Ontario Power Generation Inc., en tant que gestionnaire des services financiers, peut créer ou faire créer une ou plusieurs entités de

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: Tobias Whitfield

Telephone/Téléphone: 416-325-1456

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le : _____

Secretary/Secrétaire: _____

financement (une « entité de financement ») qui peuvent contracter des obligations de financement dans le cadre de la participation d'investissement;

ATTENDU QU'il est jugé souhaitable d'autoriser le ministre de l'Énergie et le ministre des Finances à accepter de garantir ou de rembourser les dettes, obligations, valeurs mobilières ou engagements d'une entité de financement qui sont associés à une participation d'investissement acquise par cette dernière;

EN CONSÉQUENCE :

1. En vertu du paragraphe 5 (3) de la *Loi de 2017 sur le Plan ontarien pour des frais d'électricité équitables*, le ministre de l'Énergie et le ministre des Finances, agissant de concert au nom de la province, sont autorisés à accepter de garantir ou de rembourser les dettes, obligations, valeurs mobilières ou engagements d'une entité de financement qui sont associés à une participation d'investissement acquise par cette dernière.

2. Le ministre de l'Énergie et le ministre des Finances, agissant de concert au nom de la province, sont autorisés à fixer les conditions et le plafond de la garantie ou du remboursement qu'autorise l'article 1 du présent décret.

_____

**Recommended:** Minister of Finance
**Recommandé par :** Le ministre des Finances

_____

**Recommended:** Minister of Energy
**Recommandé par :** Le ministre de l'Énergie

_____

**Concurred:** Chair of Cabinet
**Appuyé par :** Le président/la présidente du Conseil des ministres

**Approved and Ordered:**
**Approuvé et décrété le :**

_____

**Lieutenant Governor**
**La lieutenante-gouverneure**

**Ministry of Finance**
Office of the Minister

**Ministère des Finances**
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-325-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-325-0374

## Approval pursuant to section 28 of the *Financial Administration Act*

For the purpose of subsection 28(1) of the *Financial Administration Act*, I hereby approve the Minister of Energy and Minister of Finance seeking approval from the Lieutenant Governor in Council for the attached recommendation for an order in council pursuant to section 5(3) of the *Ontario Fair Hydro Plan Act, 2017*.

Minister of Finance

# Provincial Protection and Assurances Agreement

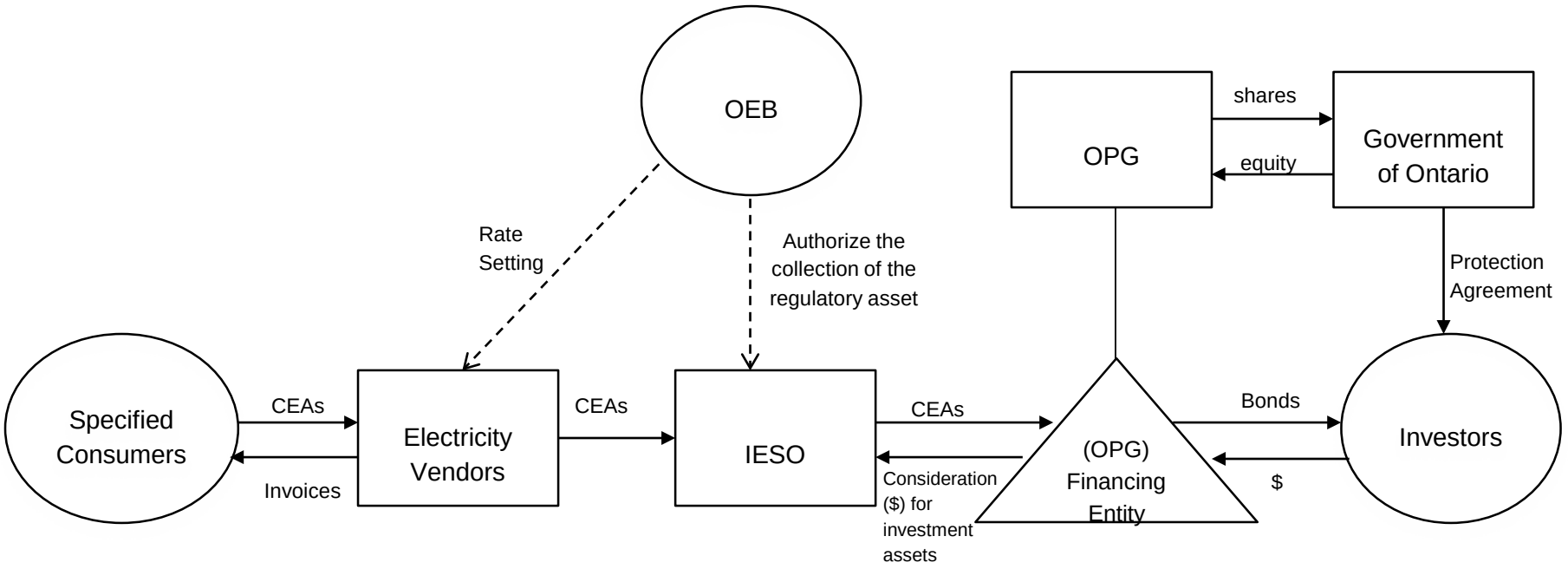
September 19, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Background

- The *Ontario Fair Hydro Plan Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account
    - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
    - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
    - The Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from ratepayers
- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
    - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- OPG has requested that the Province provide a protection agreement that supports the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would take over the funding obligations of the Financing Entity

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provisions Under the Act

- As contemplated under the Act, OPG is requesting a Provincial commitment to support the planned Financing Entity's ability to borrow to finance the deferral of global adjustment amounts in certain limited circumstances
- Under s.5(3) of the OFHP Act,
  - *The LGIC may by order,*
    - *Authorize the Minister (of Energy) and the Minister of Finance, acting together on behalf of the Province,*
      - *To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and*
      - *To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity*
    - *Specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance*
    - *Specify a maximum liability for the guarantee or indemnity*

# Provincial Protection Agreement

- OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:
    - Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the *Ontario Fair Hydro Plan Act, 2017*, or new legislation that adversely affect the Financing Entity
    - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
    - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.
- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
    - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access US market as investors in that market will likely require additional compensation if the assumption agreement is triggered

# Considerations

- If a protection agreement is not provided, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from the IESO or the cost of the financing will be potentially materially greater than it otherwise would be
- If a protection agreement is provided, the Province takes on a contingent liability
  - The creation of a contingent liability will not currently affect net debt
  - The amount of the contingent liability will increase over the duration of the Fair Hydro Plan and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
  - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
  - IOD expense may increase between $0.8B and $1.3B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

# Proposed Minute

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

a) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   i. to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and

   ii. to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

# ~~CHANGE OF LAW~~PROVINCIAL ~~-~~PROTECTION AND ASSURANCES AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) ~~Authorize~~ Approve that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend ~~to~~ that Cabinet approve an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a ~~change of law~~ protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; and
- ~~[~~Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations. ~~*Note: this third protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.*~~]

In the event the protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) to enter into a guarantee or indemnity that would increase the contingent liabilities of Ontario. ~~In this case, t~~The Minister of Finance has given Section 28 approval for the ~~, together with the~~ Minister of Energy, together with the Minister of Finance to~~, is~~ recommend~~ing~~ the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) ~~Authorize~~ Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017*~~Ontario Fair Hydro Act~~, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and

(ii) to determine terms and conditions of the guarantee or indemnity

and the maximum liability for the guarantee or indemnity.

## APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding ~~on the parties~~.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the ~~General~~ Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);~~,~~<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity ~~and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent~~. |
| **Optional ~~Replacement~~Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement.~~At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement.~~ |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |

| | |
|---|---|
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.<br>~~The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~<br><br>~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

**From:** Mike Manning
**To:** John Kim
**Subject:** FW: Provincial Support Agreement update
**Date:** Thursday, September 07, 2017 8:11:28 AM

---

Hi John:
As per Tobias's email, would it be possible for you to send me the right version ("shared clean") which I can share with OPG? I think we only want to send Appendix "A".

Thanks, Mike

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, September 07, 2017 8:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Re: Provincial Support Agreement update

I agree that it makes sense to share it right away.

I just want to make sure that we are sharing the right version, which should be in the version that John shared yesterday afternoon and with "shared clean" in the file name.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456
From: John Kim
Sent: Wednesday, September 6, 2017 6:47 PM
To: Kandeepan, Ken (OFA)
Cc: Kwan, Ronald (OFA); Mayman, Gadi (OFA); Yep, Carlos (OFA); Devine, James (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Manning, Mike (OFA)
Subject: Re: Provincial Support Agreement update

Hi Ken,

I think Gadi's email addressed this too but understanding clearly was that we would share drafts with OPG.

John

Sent from my iPhone

On Sep 6, 2017, at 5:09 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>> wrote:

Thanks John, just to be clear what we determined at the meeting yesterday was to ensure that Energy was in fact

comfortable with the OFA sharing the latest version of OPG's term sheet for the guarantee including the comments and edits from Blake's. These, while not substantially amending the term sheet does make it narrower.

Let us know

Thanks

Ken k

From: John Kim
Sent: Wednesday, September 06, 2017 5:02 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Carlos Yep <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; James Devine <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: FW: Provincial Support Agreement update

Hi Mike, Ken,

I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

From: John Kim
Sent: Tuesday, September 05, 2017 6:08 PM
To: Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Cheryl Carson (ENERGY) <Cheryl.Carson@ontario.ca<mailto:Cheryl.Carson@ontario.ca>>
Subject: FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in

mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, August 31, 2017 2:18 PM
To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Elcombe, James (MOF) <James.Elcombe@ontario.ca<mailto:James.Elcombe@ontario.ca>>
Subject: Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Mike Manning; Ken Kandeepan |
| **Cc:** | Ronald Kwan; Gadi Mayman; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY) |
| **Subject:** | FW: Provincial Support Agreement update |
| **Date:** | Wednesday, September 06, 2017 5:01:44 PM |
| **Attachments:** | Fair Hydro - August Term Sheet v1_SharedClean.doc |

Hi Mike, Ken,

I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

---

**From:** John Kim
**Sent:** Tuesday, September 05, 2017 6:08 PM
**To:** Steen Hume (CAB) <Steen.Hume@ontario.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Cheryl Carson (ENERGY) <Cheryl.Carson@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, August 31, 2017 2:18 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
**Subject:** Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**Change of Law Assumption Agreement**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br><br>Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture]. |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br><br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br><br>(2) the Legislature enacts or amends any other statute; |

| | |
|---|---|
| | (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Mike Manning |
| **Subject:** | FW: Provincial Support Agreement update |
| **Date:** | Thursday, September 07, 2017 8:14:35 AM |
| **Attachments:** | Fair Hydro - August Term Sheet v1_SharedClean.doc |

Hi Mike,
This is the one.
Going to the original email to make sure I get the right one.
John

**From:** John Kim
**Sent:** Tuesday, September 05, 2017 6:08 PM
**To:** Steen Hume (CAB)
**Cc:** Ronald Kwan ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF) ; Scott Nelms (ENERGY) ; Carolyn Calwell (MCSS) ; Gadi Mayman ; Cheryl Carson (ENERGY)
**Subject:** FW: Provincial Support Agreement update

Hi Steen,
I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.
As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.
To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.
If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.
Thanks,
John

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, August 31, 2017 2:18 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
**Subject:** Provincial Support Agreement update

John,
Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.
The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.
I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.
Please share as you think makes sense at the OFA, and let me know if you want to discuss further.
Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**Change of Law Assumption Agreement**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br><br>Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture]. |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br><br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br><br>(2) the Legislature enacts or amends any other statute; |

| | |
|---|---|
| | (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Mike Manning |
| **Subject:** | FW: TB/MBC Submission on Assumption Agreement - CEO Approved |
| **Date:** | Monday, September 11, 2017 5:06:39 PM |
| **Attachments:** | TB20 Submission_Provincial Support Agreement_V7.pdf |

I think Anna missed you in the cc:?

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:05 PM
**To:** 'Cindy.Veinot@ontario.ca' ; Steen Hume (CAB) ; Tom McKinlay (MAG)
**Cc:** Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; John Kim ; John Psinas ; James Devine ; Carlos Yep ; Vivienne Skoberne (MOHLTC) ; 'stephanie.m.smith@ontario.ca' ; Gavin He ; Tobias P. Whitfield (MOF) ; 'Hosick, Sarah (TBS)' ; Anthony Reiss (MGS) ; Malle Hanslep (MOF) ; Keley Katona (ENERGY) ; Scott Nelms (ENERGY) ; Hilary Cox (ENE) ; Jonathan Tekle (CAB)
**Subject:** TB/MBC Submission on Assumption Agreement - CEO Approved

Good afternoon,

FYI, please find attached, the CEO-approved TB Submission for the Change of Law Assumption Agreement (no longer a "Support Agreement") tracking to TB/MBC for the Sep 26 meeting. This version incorporates input received from Energy.

We can confirm that both Ministers of Energy and Finance will be asked to sign the TB submission since both Ministers will recommend the OIC and both will sign the Assumption Agreement.

Please don't hesitate to contact me should you have any questions or comments. This version is tracking for CAO/DM/Minister approval in both Ministries.

Thanks, Anna

--

Anna Strathy
Ontario Financing Authority
416.325.8032 | anna.strathy@ofina.on.ca

**From:** Anna Strathy
**Sent:** Thursday, August 31, 2017 10:44 AM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: For Review and Comment: TB/MBC Submission on Provincial Guarantee

Hi All,

Please find attached the latest version of the TB submission, which includes some comments in the margins that still need to be addressed. Thanks to everyone who has provided edits so far. I'd like to

reiterate that we're still tracking the Sept. 26 TB/MBC meeting, which means we'll have to brief our Minister next week in order to provide a final submission to TBS three weeks before the meeting.
As many of you may already know, we are now calling it a "Provincial Support Agreement" as opposed to "Provincial guarantee" as MOF legal advised this is not a true guarantee as the agreement would be contingent on certain events (whereas a guarantee would not).
Please provide further comments and edits as appropriate. We're looking to have program area and legal sign-off by Wed. Sept. 6.
Thanks,
Matt Breadner on behalf of Anna Strathy

---

**From:** Anna Strathy
**Sent:** Friday, August 18, 2017 4:07 PM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: For Review and Comment: TB/MBC Submission on Provincial Guarantee
Good afternoon,
We are now tracking the Provincial Guarantee to TB/MBC for September 26 as a Ministry of Finance item. We'll need to brief our Minister the first week of September in order to provide a final submission to TBS three weeks before the meeting. Thank you to those that have provided comments on the attached. Further comments and edits would be much appreciated.
I'll be away for the next two weeks, but Matt Breadner will be acting for me and will have access to my email. Matt will be consolidating your input and circulating revised drafts to this group. Please continue to route your comments through my email.
Thank you, Anna

---

**From:** Anna Strathy
**Sent:** Thursday, August 17, 2017 12:52 PM
**To:** 'Cindy.Veinot@ontario.ca' <Cindy.Veinot@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; 'stephanie.m.smith@ontario.ca' <stephanie.m.smith@ontario.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>;

Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Matthew Breadner <Matthew.Breadner@ofina.on.ca>

**Subject:** For Review and Comment: TB/MBC Submission on Provincial Guarantee

Hi Cindy, Steen, Kelly (for Scott), and Malle,

Attached, for your review and comment, is a draft TB submission for the Provincial Guarantee. This submission is somewhat premature, as there continue to be discussions about which Ministry might bring this forward (for instance, the Provincial Guarantee piece could be incorporated into a broader report back by the Ministry of Energy) and when this might go to TB/MBC (mid to late September); however, Gadi is on vacation for two weeks starting Monday, so we wanted to get a head start on something that could be moved forward in his absence.

I apologize for the tight timelines, but **we are hoping to have your comments (even preliminary comments) by noon tomorrow**. I expect that subsequent iterations of this submission and/or the TB Assessment Note will be circulated again for your input.

Please don't hesitate to contact me should you have any questions.

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

Ontario Ministry of Finance

# Approval Form

| Date Prepared (yyyy/mm/dd) | Deputy Minister Office Tracking Number |
|---|---|
| 2017/09/08 | |
| **Division** | **Branch/Program** |
| Ontario Financing Authority | |
| **Prepared by (Last Name, First Name)** | **Position Title** |
| Strathy, Anna | Special Policy Advisor and CEO to the OFA |

**Issue**

Authorize that the Minister of Finance and Minister of Energy provide a Change of Law Assumption Agreement, to be authorized by OIC, that under certain circumstances, the Province would take over the obligations of the Financing Entity, established by OPG under the Ontario Fair Hydro Plan Act, including principal and interest payments on debt issued to date and any outstanding payments to service providers.

**Approval**

| Approving Level | Name of Approving Official (Last Name, First Name) | Signature | Date (yyyy/mm/dd) |
|---|---|---|---|
| Director | | | |
| Assistant Deputy Minister | Mayman, Gadi | | 2017/09/11 |
| Associate Deputy Minister | | | |
| Deputy Minister Office | | | |
| Deputy Minister | | | |

**Other Approvals, As Required (Legal Services, Corporate Services, Communications, etc.)**

| | | | |
|---|---|---|---|
| Legal Director | Waterston, Michael | | |
| CAO/ADM of CQSD | | | |

**Comments**

| Return To (Last Name, First Name) | Telephone Number |
|---|---|
| Strathy, Anna | ext. |
| **Copy To (Last Name, First Name)** | **Telephone Number** |
| | ext. |

 © Queen's Printer for Ontario, 2012

# CHANGE OF LAW ASSUMPTION AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the Ontario Fair Hydro Plan Act, 2017 ("OPG Financing Entities"), that, under certain circumstances as set out in the Change of Law Assumption Agreement ("assumption agreement"), the Province would pay when due amounts in respect of the obligations of the Financing Entity.

This submission is to request that Treasury Board:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide an assumption agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

DRAFT

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a change of law assumption agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would step in and assume the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the assumption agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affect the Financing Entity;
- A court decision that declares any funding obligations of the Financing Entity to be invalid or unenforceable; and
- [Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations. *Note: this third assumption event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017*.]

In the event the assumption agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as it comes due (without acceleration). In addition, the Province would also have the option to assume the Financing Entity's outstanding obligations and liabilities.

The assumption agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) before a ministry enters into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance, together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the assumption agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the assumption agreement is provided, the Province of Ontario takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the assumption agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the guarantee.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the assumption agreement is triggered, and the Province assumes the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue or not, in some form. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.

- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

(a) Approve that the Minister of Finance and Minister of Energy provide a support agreement, as contemplated under the *Ontario Fair Hydro Plan Act*, to one or more OPG Financing Entities under the terms set out in Appendix;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

DRAFT

# APPENDIX

**Change of Law Assumption Agreement**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br><br>Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture]. |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br><br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br><br>(2) the Legislature enacts or amends any other statute;<br><br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General |

| | |
|---|---|
| | Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Carlos Yep |
| **Subject:** | FW: The meeting tomorrow |
| **Date:** | Wednesday, September 06, 2017 1:22:46 PM |
| **Attachments:** | Wataу Federal Contribution Briefing Note draft_v6Clean.docx |

---

**From:** John Kim
**Sent:** Friday, September 01, 2017 9:43 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Emily Kerr <Emily.Kerr@ofina.on.ca>
**Subject:** FW: The meeting tomorrow

Hi Mike,

Pls. see attached note we shared with Ron. We did an FYI to Gadi as well.

Both Emily and I will come by before the meeting. In particular the spread being proposed, we would like to ask your views on it (150bps). I'm heading to an LTEP meeting but should be back later this morning.

Thanks,

John

---

**From:** Emily Kerr
**Sent:** Thursday, August 31, 2017 6:25 PM
**To:** Ronald Kwan
**Cc:** John Kim ; Deena Padamadan
**Subject:** RE: The meeting tomorrow

Hi Ron,

An updated note on the Wataу federal contribution is attached.

Emily

# WATAYNIKANEYAP TRANSMISSION PROJECT

## CONTEXT

- Wataynikaneyap Power LP is planning to develop and operate electrical transmission and distribution lines in northwestern Ontario (the "Project").

- The Project will be financed with equity, senior debt and a possible contribution from the federal government. This potential federal contribution is currently under discussion between the provincial and federal governments.

- An advisor to the Ministry of Energy has provided for review the following structure for the federal contribution. Its stated intention is to meet the following:

  1. The federal government to provide support on a basis that is largely fixed, but with some flexibility relating to the quality of the power outcome.
  2. Minimize the accounting effects on the Province and federal governments at the inception of the project.
  3. The Ontario ratepayer is highly likely not to be disadvantaged by the conversion of the Watay communities to the Northern Grid.
  4. That Canada will likely be fiscally better off.
  5. There is a significant capital contribution to the Northern Grid such that, for purposes of the Ontario Energy Board rules and regulations,
     a. the capital required by the proponents is minimized and
     b. the rate base of the Northern Grid is minimized.

## OPTIONS

- The following section presents the advisor's proposed structure as well as other options:
  1. Proposed Structure: Ontario to provide $1.5 billion of limited recourse debt to the Project, to be secured by annual federal contributions over a 40 year term. The debt would be excluded from the Project rate base.
  2. Reduced Tenor: Reduce the tenor of the proposed Ontario debt to mitigate appropriations risk to some extent.
  3. Include Ontario Loan in OEB Rate Base Calculation: Include the Ontario debt in the rate base calculation, thereby reflecting the full capital structure of the Project and transferring some risk from the Province to equity holders, ratepayers and the federal government.
  4. No Ontario Loan: This option entails the Project securing the required debt from the private sector, with federal support continuing as a subsidy.

## 1. Proposed Structure

*Description*

- The federal contribution will take the form of annual payments to the Province, once the Project is in service. The federal government may be willing to contribute $80-90 million per years over 40 years.
- Based upon the net present value of expected contributions from Canada, Ontario will provide, approximately $1.5 billion of limited recourse debt to the Project. This debt will be subordinated to senior debt and only secured with a first charge assignment of the payments to be made by Canada to the Project.
  - Note that as this debt would be to an external entity, it would be a loan provided by a ministry (e.g., Energy), not the OFA, which provides loans to Public Bodies.
- Assuming an estimated capital cost of $1.9 billion and that the senior debt and equity has a 60/40 ratio, based on an OEB deemed capital structure, excluding the provincial debt, this structure would entail:
  - Senior debt: $240 million
  - Limited recourse debt: $1.5 billion
  - Equity: $160 million
- The $1.5 billion loan would be excluded from the OEB's determination of the rate base for the project.

*Considerations*

- The proposed structure may not be able to meet both the accounting and OEB-related stated objectives.

Accounting & Appropriation Risk:

- Key risks related to the proposed $1.5 billion limited recourse debt include the following:
  - According to the advisor to Ministry of Energy, were the federal government to commit to 40 years of payments, it would need to recognize the full present value amount upfront as a fiscal impact. To avoid this effect, federal payments would be subject to annual appropriations over a period estimated to 2063. Consequently, there is a risk payments may cease in the future, in which case the Province would be liable for large amount of debt without an associated payment stream or financially viable security due to the subordinated nature of the loan, and lack of a firm obligation for the loan to be repaid.
  - The annual payment may vary by a certain percentage each year due to over/under performance of the Project. Therefore, there may be a shortfall in cash available for debt service in certain years.
  - The proposed structure only includes approximately 8 per cent total equity. With a minimal equity investment, Fortis, the First Nations' partner in the project, may have a reduced incentive to ensure appropriate oversight of the project.
- As a limited recourse debt structure appears to be currently proposed, all risk would lie with the Province if there is a shortfall in cash flows from the federal government.
- Therefore, there is an accounting risk on whether the Province would need to take a provision for some or all of the loan amount **[to be confirmed by OPCD]**.

- It is proposed that the Province should receive a spread over its cost of borrowing to reflect the appropriation risk. The advisor to the Province is proposing a spread of 150 basis points. Assuming the province's long-term borrowing rate is 2.8% (based on an Ontario issued 32-year bond in 2016), a 1.5% spread would equate to an interest rate of 4.3%.
    - A discount rate of 4.3% applied to the proposed federal contribution cash stream does indeed result in a present value amount of approximately $1.5 billion.
    - Staff estimates the present value of benefits to the province from receiving a 150 basis point spread would be in the $300-$380 million range, depending on assumptions used. However, since the receipt of this benefit is dependent on continued payments from the federal government, it may need to be further discounted.
- A 4.3% interest rate may be considered minimal. For example, loans to First Nations entities that are secured by residual assets have been shown to demand an interest rate of 9.1%-18% (with a term of approximately 20 years). Relative to these types of loans, the proposed provincial loan would be completely unsecured, have a longer term and be for a significantly larger amount, all of which would support a higher interest rate.

OEB and Rate Regulation:

- The advisor to the Ministry of Energy's proposal assumes the $1.5 billion debt would be excluded from the capital structure used in the calculation of transmission rates and the revenue requirement. This results in a 60:40 debt equity structure where only senior debt and equity are taken into account, consistent with the OEB's deemed debt equity ratio for transmission investments.
- The advisor suggests one purpose of this proposal is to "buy down the rate base". By excluding the provincial loan from the calculation of the rate base, the rate base would be kept low. However, it is noted that even if the initial capital associated with a provincial loan is excluded, as sustaining capital is invested in the Project, the rate base would increase. Therefore the "buying down of the rate base" would only be temporary.
- By excluding the $1.5 billion of capital cost supported by provincial subordinated debt from the regulated rate base and associated revenue requirement, electricity rates (and Ontario ratepayers) would be unaffected by any fluctuations in cash flow requirements, or external (federal) revenues to service the limited recourse debt.
    - I.e. if there was a shortfall in federal payments, the revenue requirement would remain unchanged and the electricity rate would not increase to compensate for the shortfall in cash flows to the Project.
    - Although this structure helps protect Ontario ratepayers, all risk related to the $1.5 billion debt falls on the Province, with no risk to the federal government.
- The analysis in this note is caveated by the fact that OEB rate decisions are difficult to predict. So while the analysis here is based on what has been seen in the past, the final rate determination for the Project is solely dependent on the OEB's judgment.

**2. Reduced Tenor**

*Description*

- An option that would reduce the appropriation risk to the province would be to reduce the time frame for the repayment of the loan.
  - Were the repayment period to be reduced from 40 years to 20 years, the federal contribution would have to increase from $85 million to approximately $120 million per year.
  - Were the repayment period to be reduced from 40 years to 10 years, the federal contribution would have to increase from $85 million to approximately $200 million per year.
- Other than the reduced term, the other elements of the loan would be similar to option 1 above.

*Considerations*

- This option would entail the Ontario debt being repaid quicker, thus reducing repayment risk to some extent. Although the tenor of appropriation risk is reduced, the risk is still present. It is unclear whether the reduced repayment risk would be sufficient to allow the Province to not take a provision for some or all of the loan amount **[to be confirmed by OPCD]**.
- In addition, there would be a requirement for significantly higher annual contributions from the federal government, which the government may be unwilling to meet.

**3. Include Ontario Loan in OEB Rate Base Calculation**

*Description*

- This option removes a portion of the risks related to the proposed $1.5 billion debt from the Province by including the debt as part of the financing structure in the calculation of the revenue requirement.
  - Including this debt in the rate base would result in a 92:8 debt to equity structure, which is unusual in that the traditional OEB structure is a 60:40 debt to equity structure. However, a 92:8 debt to equity structure would reflect the advisor's proposed financing structure of the Project.
  - Alternatives could be explored, but higher equity components would have a rate impact (spread across Ontario transmission users). Consequently the OEB may see the higher debt ratio as a more favourable structure, where the overall cost of capital is lower due the lower required rate of return on debt versus equity.
- The OEB would determine the approved revenue requirement such that it would recover the full cost of capital, including the debt service of the limited recourse debt. A portion of the revenue requirement would be offset by estimated federal payments, with the balance recovered in rates.
  - The capital to build transmission lines is typically included in the rate base and is paid for by Ontario ratepayers. Consequently, including the capital paid for by a provincial loan in the rate base would be consistent with how other network transmission lines are treated.

- A variance account on estimated vs actual federal contributions could be approved by the OEB, with the difference recovered or returned to ratepayers in future rate settings.
- In this case, if there were a shortfall in the federal payments, the Province would still be paid by the utility, with the utility being able to recover the costs from ratepayers.

- This option would transfer federal appropriations risk related to the limited recourse debt from the Province to the Project's equity holders and Ontario ratepayers.
  - It would also leave the federal commitment to support the First Nations co-owned corporation in place (now for debt-service vs electricity supply costs), not transferred to the Province.
- If there is a shortfall in Canadian payments, the transmission costs could rise by varying amounts, depending on the year, up to an estimated maximum of $0.51/MWh.

*Considerations:*

- As the federal contribution is intended to replace Canada's current responsibility to support diesel generation capacity in the communities, it would be reasonable to suggest the political responsibility, commitment and risks should largely be borne by Canada rather than the Province (or Ontario ratepayers). The alternative structure would keep the responsibility to make payments to the First Nations with the federal government as opposed to the Province. This may make it more difficult for the federal government to discontinue payments.
- The original proposal results in all risk related to the debt being borne by the Province while the alternative transfers a portion of this risk to the equity investors in the Project and Ontario ratepayers, and, politically, to the federal government.
  - The federal government could also re-consider an upfront capital contribution. If the federal government were to loan the $1.5 billion limited recourse debt directly to the Project, the Provincial government and Ontario rate payers would not be responsible for any shortfalls in the annual Canadian payments, but this option may not meet the federal accounting treatment objective.
- If the OEB were to choose a traditional 60:40 structure for the Project (as in option #1), the return to equity holders would be higher than merited, considering the actual amount of equity in the Project. Although a 60:40 structure would be to equity holders' benefit, it would be at rate payers' expense. Consequently Option #3 may be more attractive to the OEB than Option #1. The revenue requirement would be lower with a reduced equity proportion (8% vs. the typical 40%) as the return on equity is typically higher than the return on debt.

**4. No Ontario Loan**

*Description*

- If the Province were to decline the opportunity to provide a loan, the Project would have to seek the required debt from the private sector [or the federal government directly]. In this case, the Project would likely have a typical 60:40 debt to equity structure, with a traditional rate base.

- If the federal government was unable to make an upfront capital contribution, it would presumably continue to provide its annual subsidy to defray the costs of electricity generation in the communities.
- The OEB would consider any payments expected to be received from the federal government, and reduce the revenue requirement by those amounts.

*Considerations:*

- With 40 per cent equity, this option would entail a higher required rate of return on capital than the other options, which would be passed on to rate payers.
- The federal government would continue to provide its subsidy and if it were to opt out in the future, the provincial government would not be at risk financially or politically. Due to the political sensitivity around withdrawing financial support from First Nations communities, it may be unlikely that the federal government would cease these payments. Especially under this option, a withdrawal of federal financial support would be seen as directly impairing improvements in First Nations communities (vs. the other options where the provincial government acts as an intermediary via the proposed Ontario loan).
- The First Nations equity holder in the Project has applied for a Provincial guarantee (under the Aboriginal Loan Guarantee Program) to cover the financing for its equity component. Under this option, the First Nation's equity component would be significantly higher, resulting in a higher requested Provincial guarantee.
- Under this option, the Province avoids risks related to the requested debt. Instead, the risk is borne by the Project and its equity holders. If the Province were to provide a guarantee to the First Nations for their equity stake, the amount to be covered would be significantly higher under this option. Consequently it could be seen that providing a guarantee for a lower amount is overall less risky than providing outright debt.

**BACKGROUND:**

- The Project plans to connect 17 remote communities to the Ontario electricity grid. Transmission lines will traverse five communities that are already grid connected, replace diesel-generated electricity at 16 communities and bring generation to one community that has no electrical service at all.
- The Project is owned by Fortis-RES (49%) and First Nations communities via First Nation LP ("FNLP"). FNLP is owned equally by 22 northwestern Ontario First Nation communities with traditional territories potentially impacted by the Project. All twenty two communities will have equal representation on FNLP.

Project Highlights

- The first phase will involve reinforcing an unreliable existing line to Pickle Lake (~300 km). The second phase will connect remote communities north of Pickle Lake to the Ontario grid (~ 1,500 km).
- Construction is expected to commence Q1/2019. Phase 1 to be in service Q3/2020. Phase 2 to be in service Q3/2023.

- Based on a 2012 study of a project to connect 20 remote communities, the Independent Electricity System Operator estimated that this project will produce nominal savings in financial costs of approximately $900 million versus continued use of diesel generation to service the full electricity demand in remote communities over 40 years. The IESO study was based on a capital cost estimate that was lower and is no longer accurate. Consequently, it should be noted the financial cost savings may in fact be lower.
- Aside from the financial cost savings for Ontario and Canada, remote communities will reap socioeconomic benefits:
  - Clean and accessible electricity
    - Freedom from electrical load restrictions that limit housing and economic development
    - Environmental benefits including reduced GHG emissions and diesel spills
  - First Nation ownership and control of development in their traditional territories
  - Distribution income from the Project to communities from equity investment
  - First Nation commercial and employment opportunities

<u>Project Funding</u>

- Funding for the current diesel generation system is primarily provided by the Government of Canada and Ontario ratepayers via the Rural or Remote Rate Protection Program. Community ratepayers pay a small portion of the actual cost of the subsidized rates. The cost of the Project will be borne by these same principal funders. Community ratepayers will pay the prevailing grid price for generation and transmission costs once the project is in-service, but the communities do not have access to sufficient capital to contribute materially to up-front Project capital costs. Consequently a contribution from the Canadian government could aid in meeting the required funding requirements.

**Strategic Project Finance Branch**
**Corporate and Electricity Finance Division**
**August 31, 2017**

**From:** Anna Strathy
**To:** Ken Kandeepan; Ronald Kwan; Mike Manning
**Cc:** Gadi Mayman
**Subject:** FW: Updated Materials
**Date:** Wednesday, October 04, 2017 9:37:55 AM
**Attachments:** Ontario-Hydro_Annual-Report-98-99.pdf
OEFC_Annual-Report-2001.pdf
OEFC_Annual-Report-2003.pdf
Government Response to AG FHP Report - MOF edits - Oct 4 820AM CLEAN (OFA).docx
AG FHP Report - Consolidated Comments - Oct 3 840pm CLEAN (OFA).docx

---

Good morning,
Final OFA edits in track changes, attached, along with supporting material as suggested by Ron. Dave needs these by 9:45am to prepare a revised version before the Secretary submits his comments at 11am**. Please flag any concerns/further edits before 9:45am**.
Thanks, Anna

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 8:33 AM
**To:** Martin Schlaepfer (MOF) ; Anna Strathy ; Kyle MacIntyre (MOF) ; Patrick Laughton (MOF)
**Cc:** William Bromm (CAB)
**Subject:** RE: Updated Materials
Good morning,
In an effort to keep the word and page count down, we have made a few edits to the report. My DM would like to try to limit the length as much as possible.
Please ask staff to make any final edits to the attached clean version.
Patrick – there's a question in the tracked version. It's about a sentence that I believe OPCD added it. The boss is looking for where in the report the AG makes that assertion.
Thanks,
Dave

---

**From:** McLean, David (MOF)
**Sent:** October 3, 2017 8:57 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); MacIntyre, Kyle (TBS); Laughton, Patrick (TBS)
**Cc:** Bromm, William (CAB)
**Subject:** Updated Materials
Hi all,
I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage,

changes to the consolidated comments should be kept to a minimum.

- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

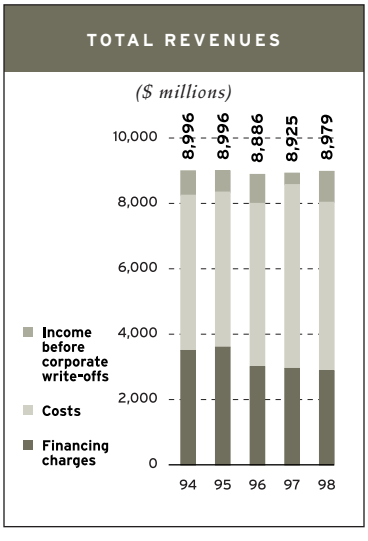
CHAIRMAN

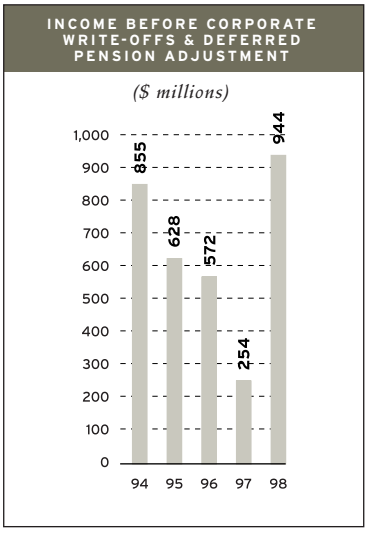
## CONTENTS

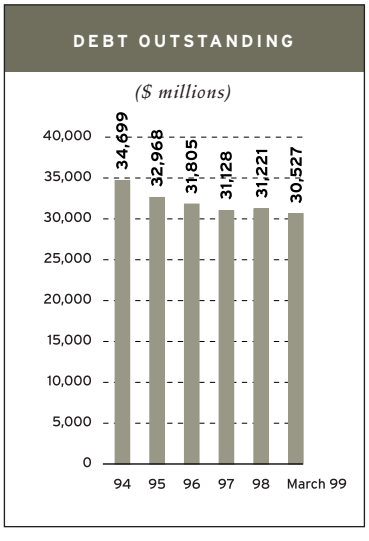

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

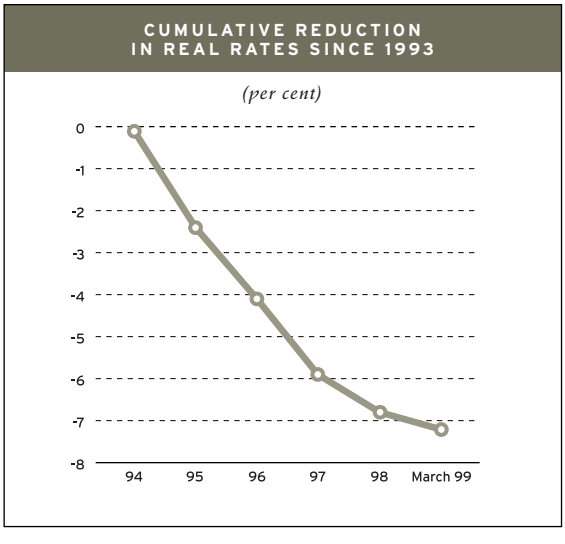
# Ending on a High Note

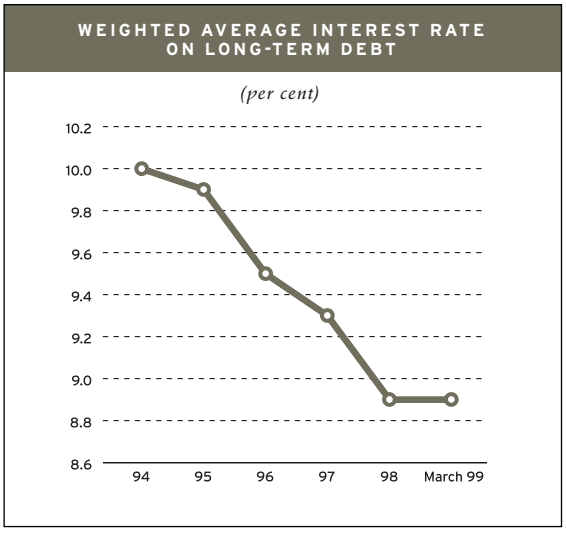
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

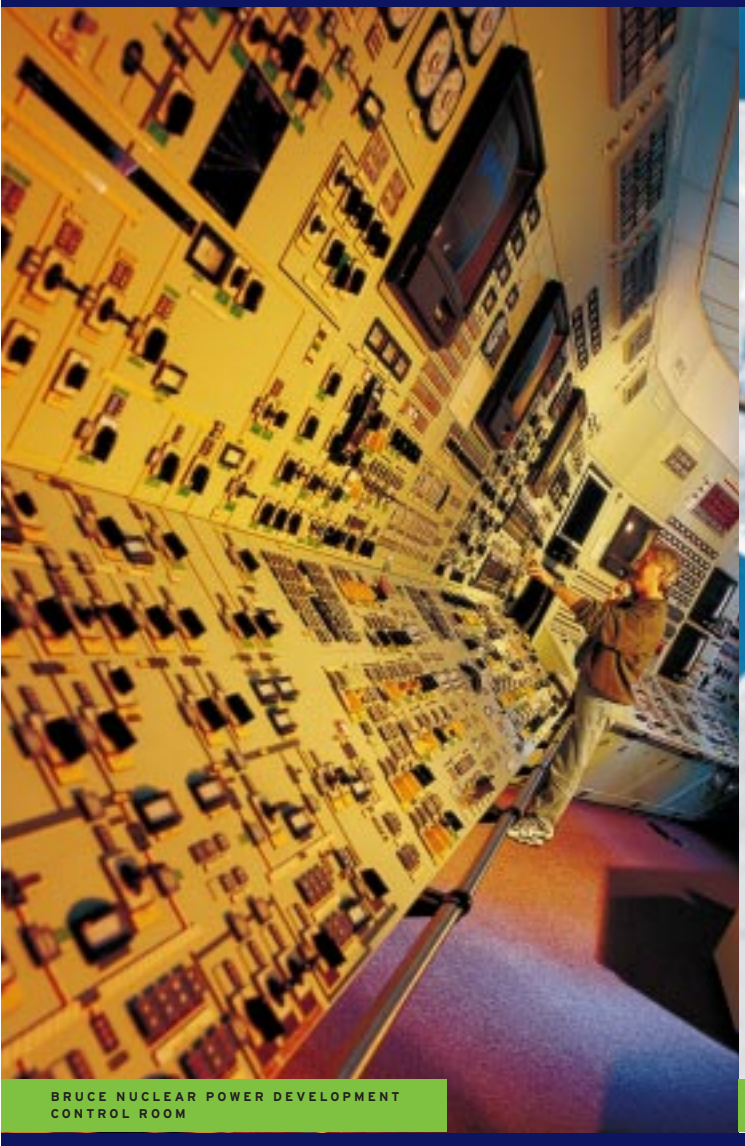
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

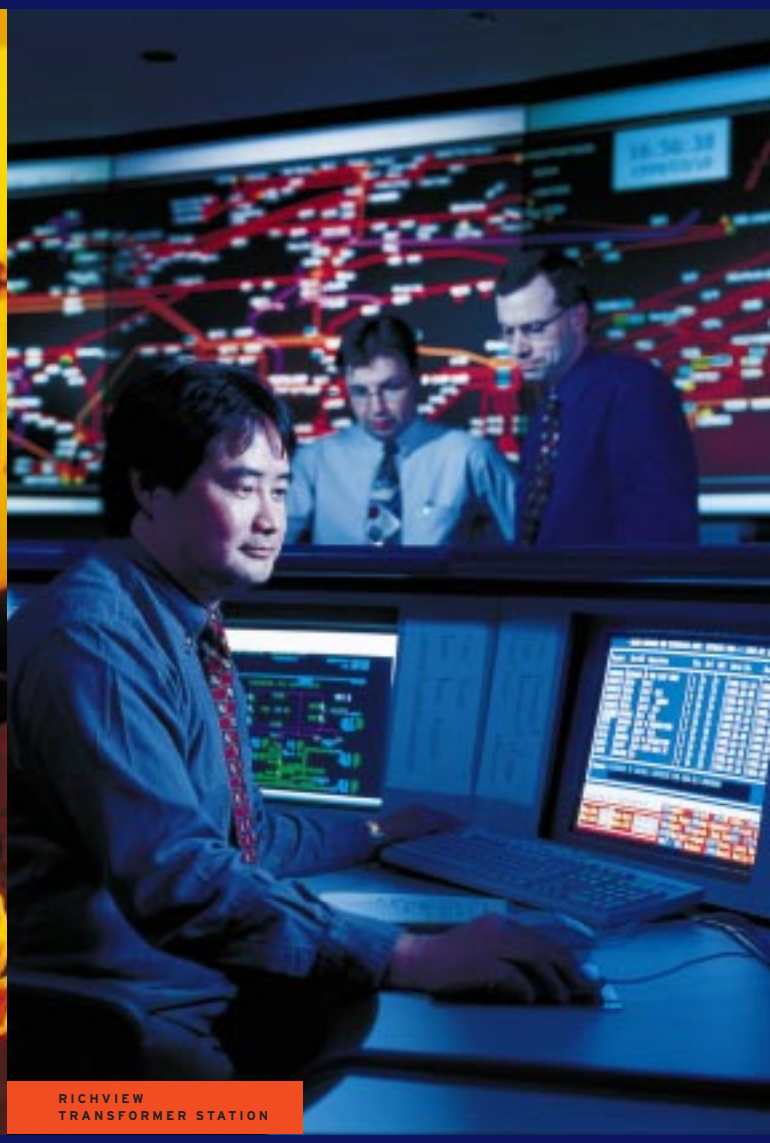
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

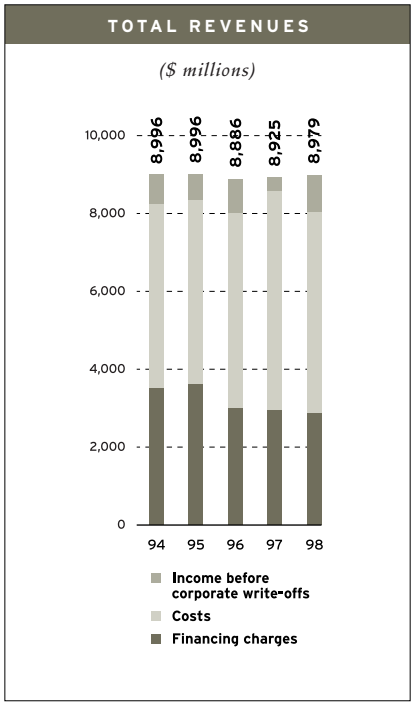
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

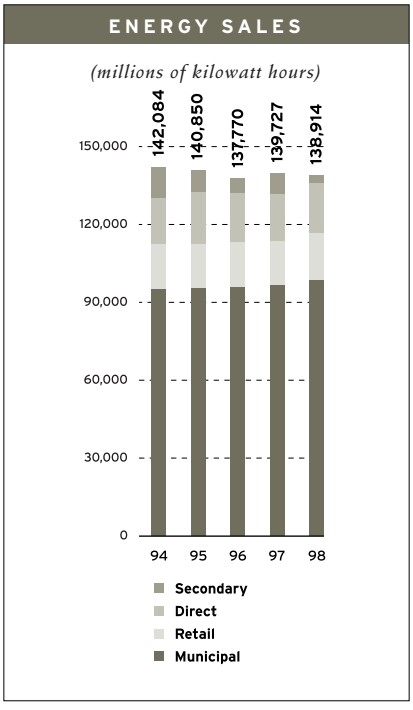
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



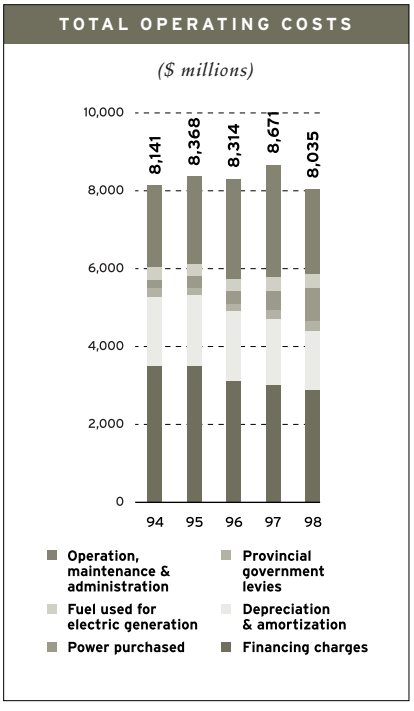

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

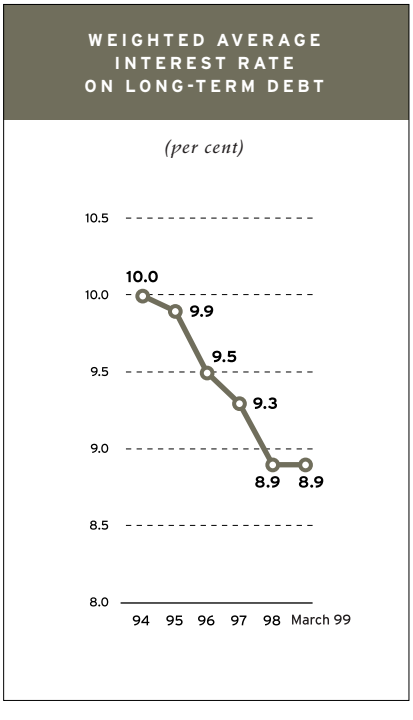
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

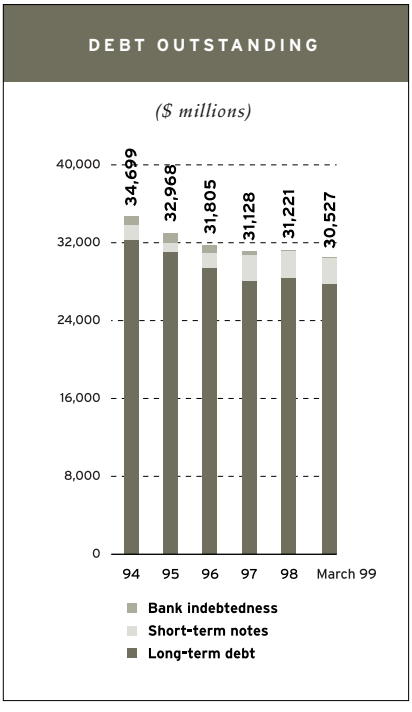
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

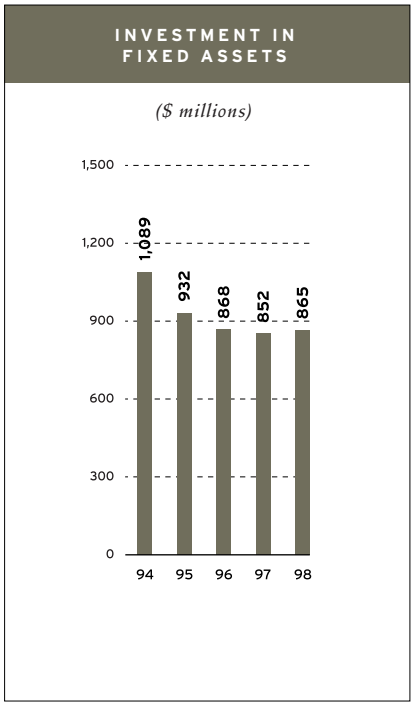
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

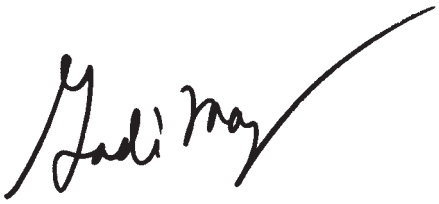
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

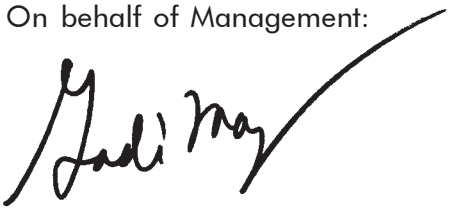
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

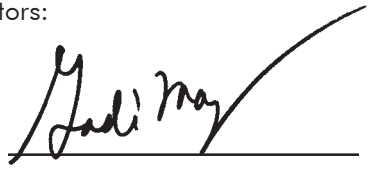
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

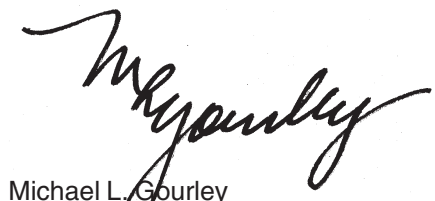
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report on *Ontario's Fair Hydro Plan (OFHP).*.

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. .

The Global Adjustment (GA) pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations <u>do not</u> "create accounting rules" or "legislate the accounting". This is a

fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

Some costs of OFHP will be borne by taxpayers and some will be borne by ratepayers. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the ~~transaction~~ program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the ~~30-~~ thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report by the OAG is premature and does not reflect the substance of this transaction.

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns and~~,~~ 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing ~~for the~~estimates over the thirty year life of the program ~~has~~ have been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure appropriate due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | OEFC 20~~16~~00-~~17~~01 and 2002-03 Annual Reports; ~~Annual Report~~Ontario Hydro 1998-99 Annual Report |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset which ~~and in accordance with the accounting definition,~~ generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period ~~to~~ that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful ~~like~~ life of the assets). The difference | |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>The penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used to appropriate account for rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of the Fair Hydro Plan will be assessed for recognition based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | FW: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 10:06:11 AM |
| **Attachments:** | Ontario-Hydro_Annual-Report-98-99.pdf<br>OEFC_Annual-Report-2001.pdf<br>OEFC_Annual-Report-2003.pdf<br>Government Response to AG FHP Report - MOF edits - Oct 4 820AM CLEAN (O....docx<br>AG FHP Report - Consolidated Comments - Oct 3 840pm CLEAN (OFA).docx |

---

FYI

**From:** Anna Strathy
**Sent:** Wednesday, October 04, 2017 10:06 AM
**To:** David McLean (MOF)
**Cc:** William Bromm (CAB) ; Martin Schlaepfer (MOF) ; Kyle MacIntyre (MOF) ; Patrick Laughton (MOF)
**Subject:** RE: Updated Materials

Hi Dave,

Please see attached input from OFA (track changes), as well as supporting documents to accompany the consolidated comments.

Thanks, Anna

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 8:33 AM
**To:** Martin Schlaepfer (MOF) <Martin.Schlaepfer@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>
**Cc:** William Bromm (CAB) <William.Bromm2@ontario.ca>
**Subject:** RE: Updated Materials

Good morning,

In an effort to keep the word and page count down, we have made a few edits to the report. My DM would like to try to limit the length as much as possible.

Please ask staff to make any final edits to the attached clean version.

Patrick – there's a question in the tracked version. It's about a sentence that I believe OPCD added it. The boss is looking for where in the report the AG makes that assertion.

Thanks,

Dave

---

**From:** McLean, David (MOF)
**Sent:** October 3, 2017 8:57 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); MacIntyre, Kyle (TBS); Laughton, Patrick (TBS)
**Cc:** Bromm, William (CAB)
**Subject:** Updated Materials

Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any

required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.

- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

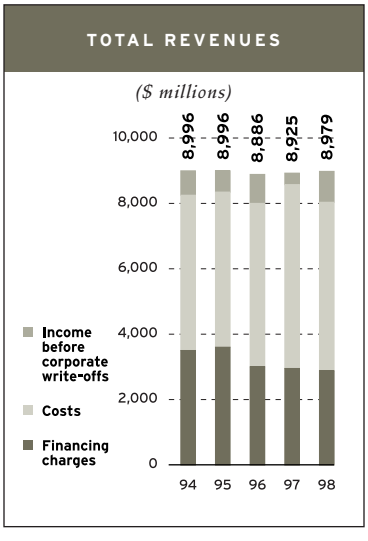
CHAIRMAN

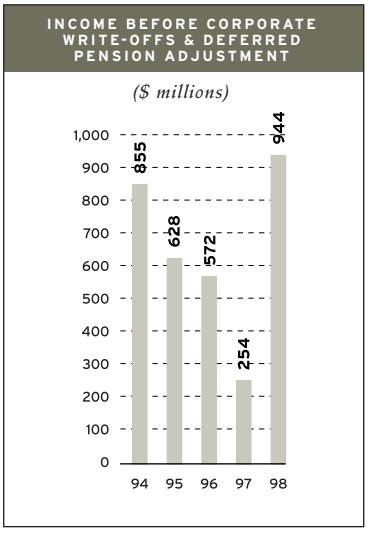
## CONTENTS

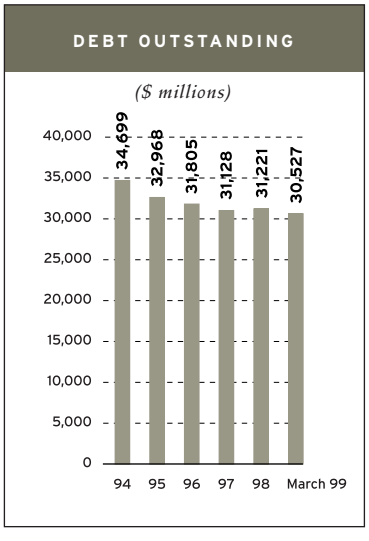

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

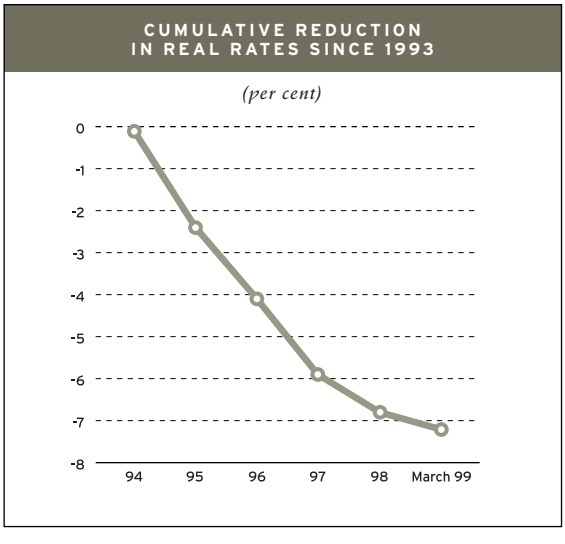
# Ending on a High Note

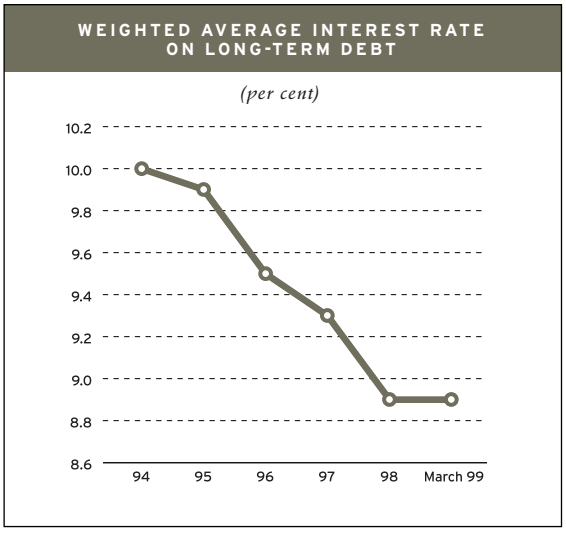
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

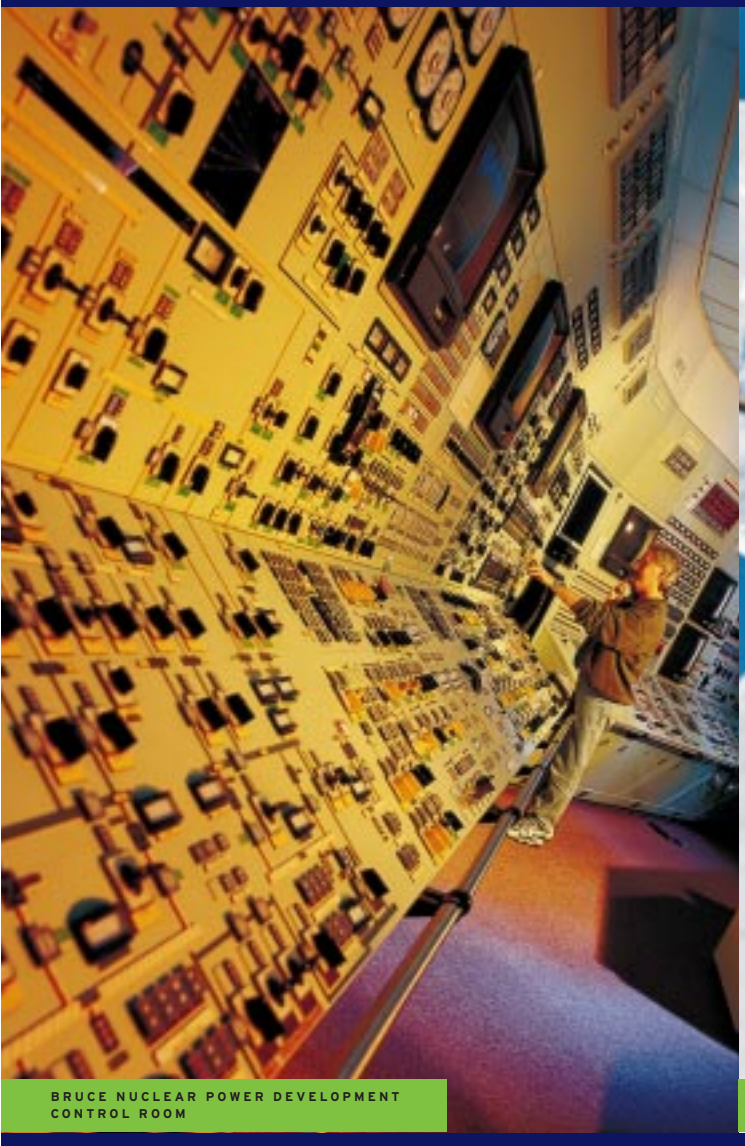
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

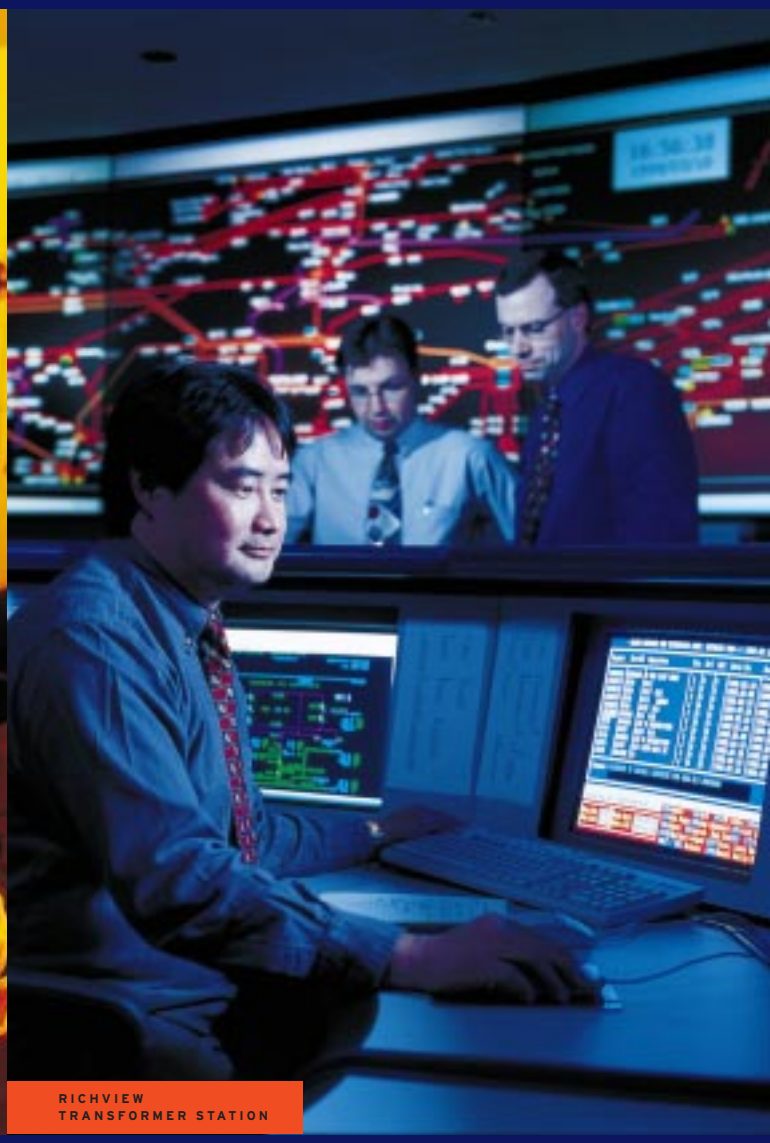
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

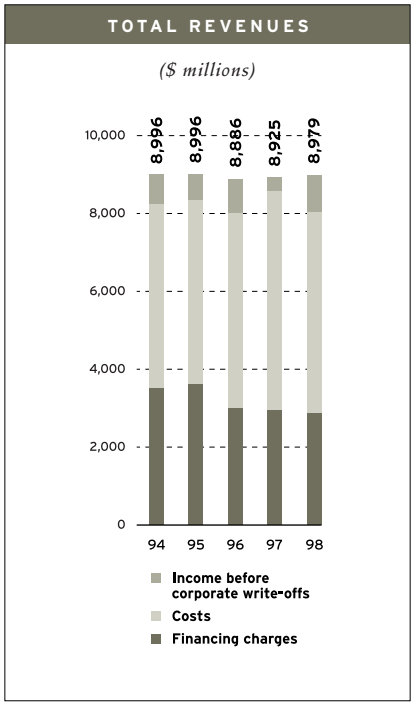
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

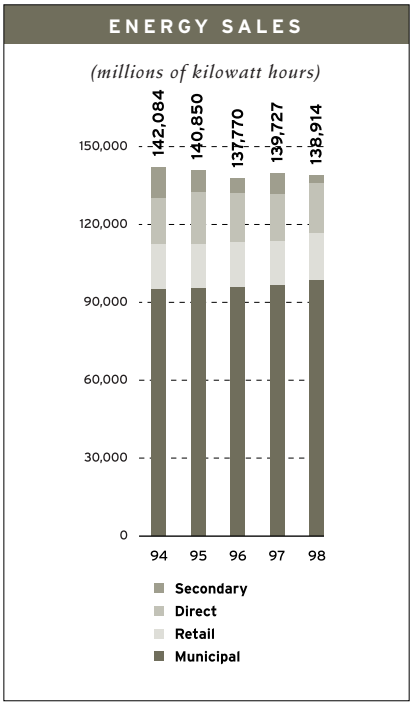
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



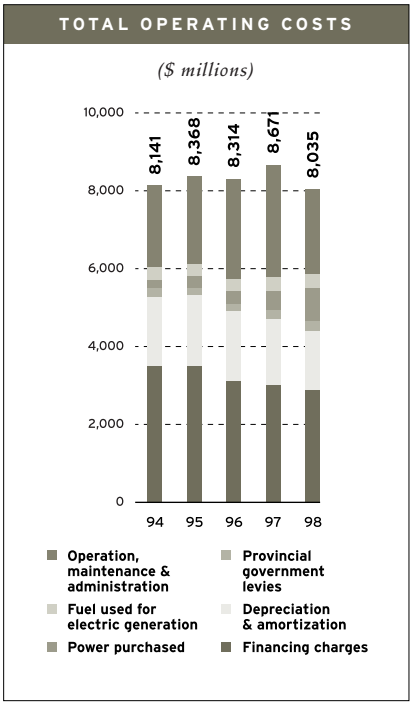

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

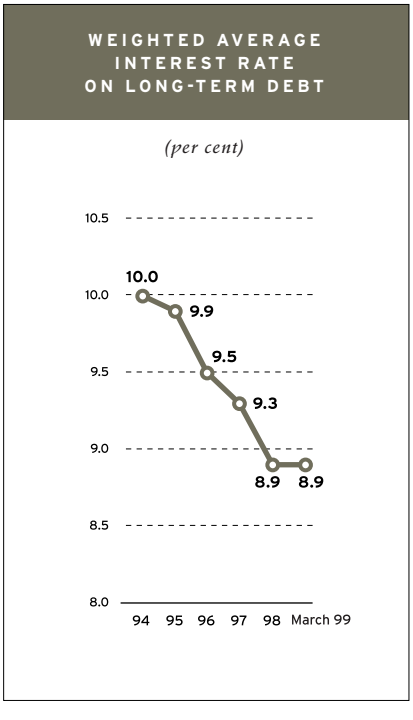
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

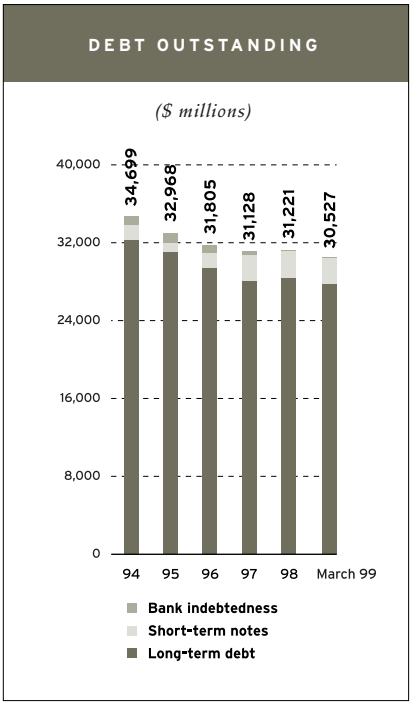
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

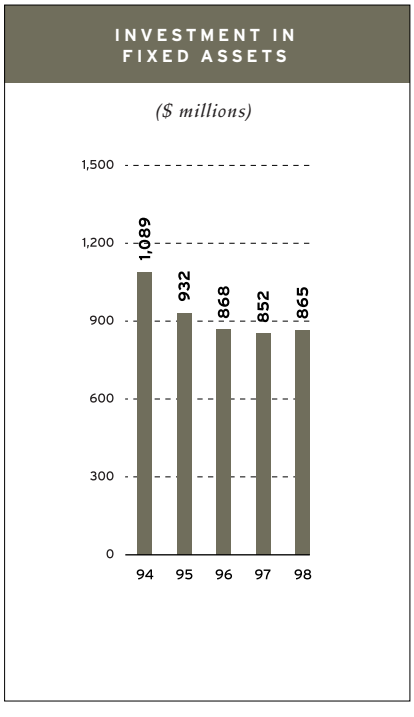
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

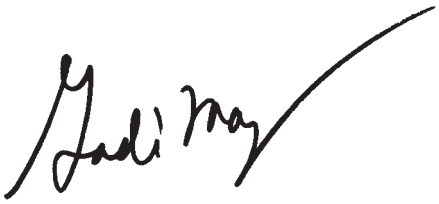
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

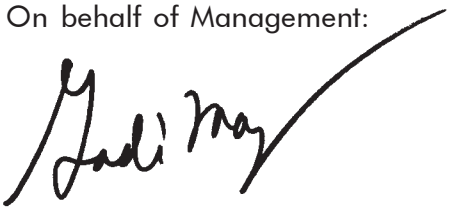
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

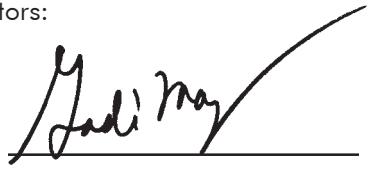
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

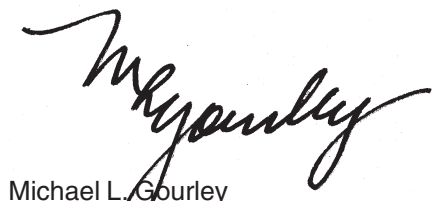
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report on *Ontario's Fair Hydro Plan (OFHP).*.

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. .

The Global Adjustment (GA) pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations <u>do not</u> "create accounting rules" or "legislate the accounting". This is a

fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

Some costs of OFHP will be borne by taxpayers and some will be borne by ratepayers. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the ~~transaction~~ program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the ~~30-~~ thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report by the OAG is premature and does not reflect the substance of this transaction.

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns and~~,~~ 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing ~~for the~~estimates over the thirty year life of the program ~~has~~ have been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure appropriate due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | OEFC 20~~16~~00-~~17~~01 and 2002-03 Annual Reports; ~~Annual Report~~Ontario Hydro 1998-99 Annual Report |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset which ~~and in accordance with the accounting definition,~~ generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period ~~to~~ that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful ~~like~~ life of the assets). The difference | |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>The penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used to appropriate account for rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of the Fair Hydro Plan will be assessed for recognition based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | FW: Updated material |
| **Date:** | Wednesday, October 04, 2017 11:34:35 AM |
| **Attachments:** | Government Response to AG FHP Report - MOF edits - Oct 4 1050AM CLEAN.docx<br>Government Response to AG FHP Report - MOF edits - Oct 4 1050AM TRACKED.docx<br>AG Report - Draft DM Response Letter - Oct 4 1110AM CLEAN.doc<br>AG Report - Draft DM Response Letter - Oct 4 1110AM TRACKED.doc<br>AG FHP Report - Consolidated Comments - Oct 4 1100AM TRACKED.docx |

---

FYI, updated versions. They didn't capture our stranded debt comments in the consolidated comments, so I'll send back a track change version.

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]

**Sent:** Wednesday, October 04, 2017 11:24 AM

**To:** Martin Schlaepfer (MOF) ; Kyle MacIntyre (MOF) ; Patrick Laughton (MOF) ; Anna Strathy ; William Bromm (CAB)

**Subject:** Updated material

Hi all,

Latest versions attached with all comments integrated. I have not included a clean version of the consolidated comments because I need folks to see my comments and update the chart.

For the response, there are a couple of comments left that need to be addressed. Please have staff review.

Thanks,

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed in the report by the Office of the Auditor General (OAG) on *Ontario's Fair Hydro Plan (OFHP).*

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the report's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

The Global Adjustment (GA) pays for the bulk of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the report's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not create accounting rules or legislate the accounting. This is a

**Commented [MD(1]:** Quotation marks removed, as those exact quotes don't seem to appear in the report.

fundamental disagreement with the report. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

The OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting social programs to the tax base, and some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The report suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate and could be seen as blurring the line between auditing the activities of government and making policy prescriptions.

**Commented [MD(2]:** Is this verbatim? Please provide page number/section number.

**Commented [MD(3]:** Someone needs to confirm that this is correct.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the report. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty -year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report does not reflect the technical substance of the OFHP, some of which have yet to be implemented.

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed ~~by~~ in the report by the Office of the Auditor General (OAG) ~~in its report entitled~~ on ~~*The*~~ *Ontario's Fair Hydro Plan (OFHP).~~ ~~*: Concerns About Fiscal transparency, Accountability and Value For Money*~~.

~~Ontario's Fair Hydro Plan (OFHP)~~OFHP is delivering the single-largest reduction in electricity rates in the province's history. In ~~the~~ develop~~ment~~ing ~~of~~ OFHP~~, which includes a rebate equal to the provincial portion of the Harmonized Sales Tax, shifting the funding of specified electricity support programs to provincial revenues and refinancing a portion of the Global Adjustment (GA)~~, the government considered a range of implementation options~~. The government~~ and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure ~~appropriate~~ due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the ~~OAG's~~report's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. ~~.~~

~~To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA, which~~The Global Adjustment (GA) pays for the ~~majority~~ bulk of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the ~~OAG's~~ report's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report ~~of OAG~~ related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not ~~"~~create accounting rules~~"~~ or ~~"~~legislate the accounting~~"~~. This is a fundamental disagreement with the report ~~of the OAG~~. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report ~~of the OAG~~ makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

~~As previously noted,~~ The OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting social programs to the tax base, and some ~~of which~~ will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly. The accounting ~~, the final analysis and documentation of which will be completed by the year-end, once the transaction is complete,~~ will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The ~~OAG~~ report suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate and could be seen as blurring the line between auditing the activities of government and making policy ~~-~~prescriptions.

OPG is beginning the process of raising funds to finance the~~se~~ deferred costs, and while total borrowing costs will not be known until the ~~transaction~~ program is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the ~~OAG~~report. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since the FAO released its report in May 2017 and ~~OPG's and its financing entity's~~ borrowing costs are now forecast to be substantially lower than original estimates. ~~As a result, c~~Current government estimates forecast that the peak debt over the thirty ~~30 -~~year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

**Commented [MD(1]:** Quotation marks removed, as those exact quotes don't seem to appear in the report.

**Commented [MD(2]:** Is this verbatim? Please provide page number/section number.

**Commented [MD(3]:** Someone needs to confirm that this is correct.

Based on the comments ~~highlighted~~ above, and given that implementation of OFHP is ~~still~~ ongoing with significant accounting and financing decisions still being finalized, the government believes that this report ~~by the OAG is premature and~~ does not reflect the technical substance of the~~is transaction~~OFHP, some of which have yet to be implemented.

**Ministry of Finance**

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

**Ministère des Finances**

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

**Treasury Board Secretariat**

Deputy Minister, Treasury Board
Secretary of Treasury Board and
Management Board of Cabinet

Room 5320, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1A1
Tel.: 416-325-1607
Fax: 416-325-1612

**Secrétariat du Conseil du Trésor**

Sous-ministre, Conseil du Trésor
Secrétaire du Conseil du Trésor et du
Conseil de gestion du gouvernement

Édifice Whitney, bureau 5320
99, rue Wellesley Ouest
Toronto (Ontario) M7A 1A1
Tél. : 416 325-1607
Téléc. : 416 325-1612

**Ministry of Energy**

Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**

Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario M5G 2C2

October 4, 2017

Dear Ms. Lysyk,

Thank you for the opportunity to review and provide feedback on your draft special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As per your letter to Deputy Thompson, dated September 26, 2017, our review focused on confirming the factual accuracy of the report. Please find enclosed succinct written comments and suggestions resulting from our ministries' coordinated review.

We have also enclosed a government response to the special report. Given the nature and the complexity of the issues, the response needed to be longer than the word limit you proposed.

As you know, as part of its preparations for the development of the implementation of the Government's Fair Hydro Act, Navigant Consulting was engaged to conduct analysis and prepare a report. The report was commissioned in June 2017 and completed at the end of September 2017. Although the report was not commissioned as a result of your audit or to respond to any questions raised by your office as part of your audit process, we believe it does contain information relevant to your audit. As per your letter which noted that we should share any other information that may be relevant, we felt it would be appropriate to share a confidential copy of the report with your office while we continue to assess whether the report will be made public.

…/con't

Once your office has had the opportunity to review the enclosed information, you may find it useful to have further meetings with ourselves and/or staff from our ministries. We will be pleased to make ourselves available to provide clarification or to answer any additional questions. Our Ministers are also available to meet with you to discuss your report and the government response during the week of October 9th.

The Ministry of Finance, Treasury Board Secretariat and the Ministry of Energy are committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

Sincerely,

| | | |
|---|---|---|
| Scott Thompson | Helen Angus | Serge Imbrogno |
| Deputy Minister | Deputy Minister | Deputy Minister |
| Ministry of Finance | Treasury Board Secretariat | Ministry of Energy |

**Ministry of Finance**

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

**Ministère des Finances**

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

**Treasury Board Secretariat**

Deputy Minister, Treasury Board
Secretary of Treasury Board and
Management Board of Cabinet

Room 5320, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1A1
Tel.: 416-325-1607
Fax: 416-325-1612

**Secrétariat du Conseil du Trésor**

Sous-ministre, Conseil du Trésor
Secrétaire du Conseil du Trésor et du
Conseil de gestion du gouvernement

Édifice Whitney, bureau 5320
99, rue Wellesley Ouest
Toronto (Ontario) M7A 1A1
Tél. : 416 325-1607
Téléc. : 416 325-1612

**Ministry of Energy**

Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**

Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario M5G 2C2

October 4, 2017

Dear Ms. Lysyk,

Thank you for the opportunity to review and provide feedback on your draft special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As per your letter to Deputy Thompson, dated September 26, 2017, our review focused on confirming the factual accuracy of the report. Please find enclosed succinct written comments and suggestions resulting from our ministries' coordinated review.

We have also enclosed a government response to the special report. Given the nature and the complexity of the issues, the response needed to be longer than the word limit you proposed.

As you know, as part of its preparations for the development of the implementation of the Government's Fair Hydro Act, Navigant Consulting was engaged to conduct analysis and prepare a report. The report was commissioned in June 2017 and completed at the end of September 2017. Although the report was not commissioned as a result of your audit or to respond to any questions raised by your office as part of your audit process, we believe it does contain information relevant to your audit. As per your letter which noted that we should share any other information that may be relevant, we felt it would be appropriate to share a confidential copy of the report with your office while we continue to assess whether the report will be made public~~be appropriate to share a confidential copy of the report with your office in advance of it being made public~~.

Once your office has had the opportunity to review the enclosed information, you may find it useful to have further meetings with ourselves and/or staff from our ministries. We will be pleased to make ourselves available to provide clarification or to answer any additional questions. Our Ministers are also available to meet with you to discuss your report and the government response during the week of October 9th.

The Ministry of Finance, Treasury Board Secretariat and the Ministry of Energy are committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

Sincerely,

| | | |
|---|---|---|
| Scott Thompson | Helen Angus | Serge Imbrogno |
| Deputy Minister | Deputy Minister | Deputy Minister |
| Ministry of Finance | Treasury Board Secretariat | Ministry of Energy |

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | N |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

**Commented [MD(1]:** Are we referring to the emails already provided? If so, I suggest changing this to 'N'.

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure ~~appropriate~~ due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

**Commented [MD(2]:** Are we referring to the Navigant report? If so, can we specify?

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | Y<br>Please see enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 Annual Report~~OEF~~ |

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset and in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the | ~~C 2016-17 Annual Report~~ |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that way already spreading the cost recovery of the debt over time.<br><br>Finally, ~~T~~the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | N |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used ~~to appropriate account for~~ by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of ~~the~~ Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y<br>See hyperlink |

**Commented [MD(3]:** Are we including? Is there a hyperlink?

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF) |
| **Cc:** | Ronald Kwan; John Psinas; John Kim; Mike Manning; Carlos Yep; James Devine; Anna Strathy |
| **Subject:** | Fair Hydro - August Term Sheet v1.doc |
| **Date:** | Wednesday, September 06, 2017 11:17:21 AM |
| **Attachments:** | Fair Hydro - August Term Sheet v1.doc |

---

Hi Malle and Toby

As mentioned yesterday, pls find attached my edits and comments on the MOE note.

Thanks

Ken k

**Confidential and Solicitor-Client Privileged**

**Ministry of the Attorney General**
***Briefing Note***
**Civil Law Division**
**Legal Services Branch**
**ENERGY/MEDG/MRIS/MOI/ADO**

# FAIR HYDRO PLAN – PROVINCIAL GUARANTEE

## A. Issue

- Provincial Support Agreement Term Sheet

## B. Background

- Under the terms of the proposed *Ontario Fair Hydro Plan Act, 2017* (the "Act"),[1] it is anticipated that the Ontario Power Generation ("OPG") will establish a subsidiary entity (the "Financing Entity") that will undertake a public debt offering that is part of the ~~to~~ financing~~e~~ required for the implementation of the Ontario Fair Hydro Plan (the "Fair Hydro Plan").

- The Ontario Finance Authority (the "OFA") is leading the negotiation of a term sheet with OPG that would outline the basis upon which the government of Ontario ("Ontario") would provide financial assurance to support such a debt offering.

- OPG has advised that a term sheet codifying Ontario's commitment, at least at a high level, will be necessary to support OPG's pending discussions with credit rating agencies. OPG and its advisors are of the opinion that a robust provincial guarantee has the potential positively impact on the eventual credit rating assigned to the financing entity. , ~~as well as the anticipated triple-A rating of the proposed debt offering.~~

- OPG provided the OFA with a draft of a proposed term sheet dated May 12, 2017 (the "May Term Sheet"). The May Term Sheet included a number of features that were unacceptable to Ontario, including, most notably, a requirement to pay off all debt obligations of the Financing Entity including a 1% premium under certain circumstances. Other features that presented difficulties from the Province's perspective included a performance guarantee covering obligations of the Independent Electricity System Operator (the "IESO") and a liquidity guarantee that would be triggered in the case of financial market disruption.

**Commented [KK1]:** Note that the public debt offering is only 51%

**Formatted:** Normal, Indent: Left: 0", Hanging: 0.3", Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

[1] S.O. 2017, c. 16, Sched. 1.

- In a meeting on July 12, 2017, the OFA communicated Ontario's concerns about the May Term Sheet and indicated that the province would be willing to provide financial assurance to prospective investors in respect of only two kinds of risk:

    - the possibility of future legislative by the government of Ontario compromising the economic rights of investors; and

    - the possibility that the Fair Hydro Plan is ultimately found to be invalid from a constitutional perspective by a court of competent jurisdiction.

    - A change in the organization, structure or operations of the IESO or a change in the electricity market structure that adversely affects the ability of the Financing Entity to make payments on its debt obligations

- The OFA accepted that it was fair and reasonable for the province to provide a guarantee in respect of these three~~wo~~ risks because they would be a consequence of the government`s past and future policy decisions. However, the OFA indicated that investors would need to assume the risk associated with other aspects of the Fair Hydro Plan and the risk of future capital market disruptions.

## C. Current Status

- The OPG took Ontario's position back to the investment dealers and worked with them to develop a revised term sheet that better reflected this more limited form of provincial guarantee (the "August Term Sheet").

- Ontario's external counsel (Blake, Cassels & Graydon LLP ("Blakes")) provided a mark-up of the August Term Sheet identifying a number of continuing concerns arising out of the draft provisions and to propose further amendments intended to address those concerns.

- On August 22, 2017, counsel from the Ministry of Energy, the Ministry of Finance ("MOF-LSB") and Blakes met with representatives from the OFA to discuss a number the issues identified by Blakes, as well as a number of further concerns identified by counsel in MOF-LSB.

## D. Analysis

***Purpose of Term Sheet***

- As a preliminary matter, it is important to recognize that the purpose of the proposed Term Sheet is not to create enforceable rights or obligations. Section 5(3) of the Act makes it clear that any guarantee provided by the province must be agreed to by the Minister of Energy and the Minister of Finance (acting together) as authorized by order of the

**Formatted:** English (United States)

**Formatted:** List Paragraph, No bullets or numbering

Lieutenant Governor in Council (the "LGIC"). The LGIC has not yet made an OIC authorizing the responsible Ministers to enter into any guarantee and therefore the Ministers do not yet have any legal authority to do so.

- Against this backdrop, it is clear that the purpose of the Term Sheet is to outline, in a general way, a high level understanding of the type of financial assurance that the province might be willing to provide to prospective investors in appropriate circumstances. The actual terms and conditions of any future assurance agreement entered into by Ontario will need to be fully negotiated in the context of a specific transaction and would necessarily be subject to LGIC and Ministerial approval.

***Continuing Legal Concerns***

- Attached to this briefing note as **Appendix "A"** is a revised draft of the August Term Sheet reflecting the consolidated legal comments of Blakes, MOF-LSB and ENE-LSB. The revisions are broadly intended to address the following concerns:

  - **Title** – Blakes is of the view that the proposed provincial assurance agreement is more accurately characterized as an indemnity arrangement, than a guarantee. There are highly technical reasons underlying this position and we note that OPG's external counsel (Torys LLP) does not agree with this concern. Rather than engaging in this debate, we have simply re-titled the proposed agreement as a "Change of Law Assumption Agreement," which more specifically reflects the substantive nature of the assurances that the province intends to provide.

  - **Preamble** – We have added a provision to the preamble to more explicitly confirm that the arrangements contemplated in the Term Sheet are subject to further government approvals and that the document is not intended to create any legally binding obligations.

  - **Beneficiaries** – Torys has indicated that the provincial guarantee must be given directly in favour of the Indenture Trustee, rather than the Financing Entity. The purpose of this change is to ensure that bondholders would have a direct remedy against Ontario. We have revised the draft Term Sheet to reflect this intention on the basis that it would not materially increase the scope of Ontario's legal or financial liability under the guarantee. However, we note that one consequence of this change is that Ontario would be considered a separate issuer for U.S. securities law purposes.

  - **Specified Claims** – The August Term Sheet purported to extend to all of the "rights and interests of the Financing Entity", including, but not limited to, the right to receive the payments contemplated under the Fair Hydro Plan. The OFA has previously indicated to OPG that the province is only willing to be responsible for the payment of *principal* and *interest* on Senior Debt Obligations. This would

**Commented [KK2]:** Reading the comments from Steve Ashbourne, I am not sure if he conclusively states that Ontario will in fact become an issuer, rater he simply raises the possibility. In any event this is only an issue if the FE has to raise funds in the US Markets, something that the OFA is not in favour, at least over the next few years.

exclude other costs and fees incurred by the Financing Entity related to the Fair Hydro program such as payments to service providers (*e.g.*, law firms, accountants) and other types of claims that might be advanced by Beneficiaries in connection with the proposed guarantee. Limiting the province's liability to "senior" debt holders excludes OPG (who is a subordinated debt holder) on the basis that the province has already funded OPG's contribution by way of a liquidity injection. We have revised the Term Sheet to reflect these more limited concepts (primarily by way of a new definition of "Specified Claims").

**Commented [KK3]:** The OFA is not particularly fussed about extending the guarantee to cover these payments; within the overall context of the FHP these amounts will not be material.

- **Materiality Threshold** – The August Term Sheet included a series of "Guarantee Activation Events" that would trigger Ontario's obligations under the provincial assurance agreement. Although the enumerated list of events substantially reflected the limited form of guarantee proposed by the OFA, the August Term Sheet removed the "materiality" threshold for guaranteed claims. The intent of this change is to make the province liable in any case where the obligations of bondholders are not paid in full. However, this strict form of guarantee would expose the province to any unreasonable degree of risk. Beneficiaries could potentially seek to trigger the guarantee in response to routine legislative amendments affecting the value of their investment interest only indirectly or in insignificant ways (*e.g.*, a merely theoretical diminution in the value of the regulatory asset or some kind of timing issue that modestly delays payment). For this reason, we have reintroduced the concept of "materiality" in the list of Guarantee Activation Events (now described as "Assumption Events").

- **Right of Subrogation** – We have added a provision to the Term Sheet making it clear that Ontario will be subrogated to the rights of Beneficiaries who receive payments under the guarantee. This ensures that the province will be entitled to pursue any civil remedies against third parties that may have been available to the Beneficiary in respect of such amounts.

- **"Assumption" of Obligations** – The provisions of the August Term Sheet stated that, upon the occurrence of a Guarantee Activation Event, Ontario "assume and pay" all of the obligations of the Financing Entity. This language seems to intend that the province would directly assume all of the Financing Entities obligations to the Indenture Trustee and bondholders. The OFA has previously indicated that Ontario is only willing to commit to pay the principal and interest obligations of the Financing Entity as they come due, and not to replace the Financing Entity and become directly liable for all its obligations (except at its own option as discussed below). We have revised the Term Sheet to reflect this more limited commitment.

- **Optional Replacement** – We have added to the Term Sheet an optional right on the part of the province to assume all of the rights and liabilities of the Financing Entity, without the need for any further consent or approval of the Indenture

Trustee. This would provide Ontario with greater flexibility in determining how to deal with any claims arising under the guarantee, without imposing this more onerous obligation on the province.

- **Approval Requirements** – We have revised the approval requirement section of the Term Sheet to modestly strengthen Ontario's rights associated with the process for approving future transactions that will be covered by the provincial assurance agreement.

- **Warehousing/Commingling Risks** – The August Term Sheet included a series of provisions dealing with ongoing business concerns associated with debt warehousing risks and LDC credit rating commingling. As far as we are aware, the arrangements contemplated in these sections have not been agreed to by Ontario and it is not helpful to link them in this way to the ongoing negotiations around the proposed guarantee. For this reason, we have deleted them from the Term Sheet.

## E. Recommendations and Next Steps

- MOF-LSB will be arranging a meeting with the OFA as early as practicable next week to discuss the communication of these comments and the revised draft Term Sheet to OPG.

Date: August 31, 2017

Prepared by: Tom McKinlay, General Counsel
Legal Services Branch, Ministry of Energy
416-212-5766

Approved by: Carolyn Calwell, Director
Legal Services Branch, Ministry of Energy
416-212-8392

# APPENDIX "A"

**Change of Law Assumption Agreement**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br><br>Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture]. |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br><br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br><br>(2) the Legislature enacts or amends any other statute; |

| | |
|---|---|
| | (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | WONG Leslie -LAWDIV |
| **To:** | James Rehob (ENERGY) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; Steen Hume (CAB); Mike Manning |
| **Subject:** | Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Thursday, September 07, 2017 4:19:41 PM |
| **Attachments:** | Memorandum on Acceleration Proposal.docx |

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les
Leslie Wong
Senior Counsel
***Ontario Power Generation Inc.***
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

Memorandum

**To:** Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

**Date:** August 30, 2017

**From:** Ontario Power Generation Inc.

**Subject: Acceleration of Ontario Fair Hydro Plan Act Obligations**

Under the *Ontario Fair Hydro Plan Act*, 2017, clean energy adjustments are designed to recover the "funding obligations" and "finance amounts" (as defined in the Act and regulations thereunder, respectively, collectively referred to as the "**Obligations**") that become due during a reference period (each generally a six month period). This means that if there is an event of default under the master trust indenture (the "**Indenture**") that is not or cannot be cured, the full amount of the accelerated Obligations may become due and payable and be included in the calculation of the clean energy adjustments for the next reference period. Furthermore, it is likely that all funding obligations will be cross-defaulted to each other, so acceleration of one series of funding obligations will likely result in acceleration of all funding obligations. Accordingly, electricity rates for specified consumers would be set at a rate for a six-month period that would result in repayment in full of all outstanding and accelerated Obligations. On the assumption that all interested parties would like to avoid such a scenario, we have discussed with the dealers the following as an approach in the context of an event of default:

1. Upon the occurrence of a Default under the Indenture (being an event which, with the passage of time or giving of notice could become an Event of Default), the Province would have the following rights:

(a) a right to receive written notice from the trustee under the Indenture (at the same time that such trustee provides a notice to the financing entity through OPG as the manager) that a Default has occurred;

(b) in the event of the occurrence of an Event of Default that is not based upon the occurrence of a Default followed by a cure period (such as insolvency of the financing entity), a right to receive written notice from the trustee under the Indenture that an Event of Default has occurred; and

(c) a right to cure the Default or the Event of Default, as the case may be, within a specified cure period, which will run concurrently with any cure period available under the Indenture with respect to the applicable Event of Default.

2. The Indenture will provide that notwithstanding the occurrence of an Event of Default, the Obligations may not be accelerated until the expiry of the cure period available to the Province. If the Default or Event of Default in question cannot be cured by the Province on behalf of the financing entity within this cure period, then the Province will have the option to "cure" and avoid acceleration of the Obligations by assuming those Obligations. This option would be set out in the provincial protection and assurances agreement. In such circumstances, as in the case of a change of law, the Fair Hydro program would be discontinued and the Obligations owing under the program would be those of the Province.

**From:** Anis Hirani
**To:** Mike Manning; Ronald Kwan; Ken Kandeepan
**Cc:** Martine Bell; Angie Georgakakos
**Subject:** Fair Hydro

**From:** Mike Manning
**To:** Anis Hirani
**Subject:** Fair Hydro
**Date:** Monday, October 30, 2017 3:40:19 PM

---

Hi Anis:
Would it be possible to arrange a 15 minute meeting with ken Kandeepan & Ronald Kwan on Fair Hydro tomorrow? Let me know if that is problematic.

Thanks, Mike

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Mike Manning; "HAHN PARKER Janet -TREASURY"; "LEE John -TREASURY"; RYFA Ken -TREASURY; Ken Kandeepan; WONG Leslie -LAWDIV; John Kim; Ronald Kwan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); "Ramchandani, Rima"; "STEPHEN.ASHBOURNE@blakes.com"; Mark Donaldson (MOF); Hosick, Sarah (TBS); Scott Nelms (ENERGY); Keley Katona (ENERGY); Cengarle, John (MOF); Gadi Mayman; John Psinas |
| **Subject:** | Final Term Sheet - Provincial Protection Agreement |
| **Date:** | Monday, September 18, 2017 9:46:22 PM |
| **Attachments:** | Term Sheet - Provincial Protection Agreement - Sept 18 - Clean.docx<br>Term Sheet - Provincial Protection Agreement - Sept 18 - Blackline.pdf |

---

Good evening,

Please find attached, the final term sheet for the Provincial Protection Agreement (clean and black-lined). You'll see the attached reflects today's decision to square bracket the word "materially". This version also incorporates minor edits from Tory's sent by Rima on Thursday evening (the addition of "or amends" and the word "electricity").

Thank you,

Anna

Anna Strathy

Special Policy Advisor to CEO

Ontario Financing Authority

1 Dundas Street West, 14th Floor

416.325.8032 | anna.strathy@ofina.on.ca

-----Original Appointment-----
**From:** Anis Hirani
**Sent:** Friday, September 15, 2017 3:03 PM
**To:** Anis Hirani; Mike Manning; 'HAHN PARKER Janet -TREASURY'; 'LEE John -TREASURY'; RYFA Ken -TREASURY; Ken Kandeepan; Anna Strathy; WONG Leslie -LAWDIV; John Kim; Ronald Kwan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF)
**Cc:** Martine Bell; Angie Georgakakos; Rasika Yatawara; Eden Amare
**Subject:** Provincial Support Agreement - OPG
**When:** Monday, September 18, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Boardroom Exec - 1 Dundas Street West, Suite 1400

***Confidential***
***<u>Updated Version</u>: September 18, 2017***

**<u>Provincial Protections and Assurances</u>**

**<u>Indicative Term Sheet</u>**

**<u>Ontario Fair Hydro Plan Act, 2017</u>**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Subject:** Follow-up
**Date:** Friday, September 08, 2017 1:51:16 PM

---

Hi Malle:
Any thought on timing for follow-up on Fair Hydro issues?

Thanks, Mike

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Anna Strathy; Mike Manning; Ken Kandeepan; Ronald Kwan |
| **Subject:** | For our discussion |
| **Date:** | Thursday, November 09, 2017 4:32:33 PM |

---

Process Agreement

- 2.01 Deliveries to the Province
    - No concerns with removing PILS/tax language
- 2.02 Covenants
    - First use of *commercially reasonable efforts* and then throughout
    - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - No concerns with this deletion
    - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
    - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
    - No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - Why not seek consent of the Province when changing its obligations?
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

**From:** Whitfield, Tobias P. (MOF)
**To:** Mike Manning
**Subject:** Fw: Draft Documents
**Date:** Tuesday, November 14, 2017 10:00:27 AM

---

<Malle.Hanslep@ontario.ca>
Sent: Sunday, November 12, 2017 11:03 AM
To: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF)
Subject: Draft Documents

CONFIDENTIAL AND PRIVILEGED ,

Hi all,

There are quite a few points for discussion raised by the drafts and included in Blakes' comments. Here are some of the main ones that we could discuss tomorrow morning at 9:30. I understand that the OFA will be arranging a meeting of the group for Tuesday morning. As mentioned previously, it has conveyed that OPG would like to receive revised drafts of these agreements by the end of the day on Wednesday that it can take to its board meeting on Monday November 20th. As a result, I think that this will require a lot of time on Tuesday and Wednesday to do this. Thanks to you all for being available tomorrow morning.

Protection Agreement

1. Parties to the Agreement.

- Status of Financing Entity and how it is entering into the Protection Agreement as well as all of the other agreements relating to the program. Is the Financing Entity still the named party (i.e. legal entity would be trustee) even if some of these agreements are signed by its agent?

- Who controls and makes the decisions for the Financing Entity? Trust Declaration mentions unit holders – who are the unit holders?

- This is also goes to the standard of "commercially reasonable efforts" that OPG is seeking to include in the Process Agreement. This standard doesn't make sense where FE is a subsidiary of OPG. Explain standard and how it compares with other possible standards to apply. Should the Financing Entity also directly be a party to the Process Agreement?

- OPG and directors, employees and officers have provincial indemnity for activities undertaken in connection with FHP – agreement dated June 1, 2017

- How does this affect the Province's rights of subrogation, etc.

2. The Provincial Indemnity Agreement in favour of OPG should not be referenced in the Protection Agreement. It is not relevant to the Province's obligations under the Protection Agreement which are for the benefit of the beneficiaries, not OPG and its employees, officers etc. The Province is not obliged to indemnify the Financing Entity under that indemnity – it is specifically excluded.

3. Limited Guarantee Wording

- Discuss deletion of “without acceleration” by OPG – what could be their rationale?

- Need to discuss alternative wording suggested.

- “Protection Account” and “Available Collections” – Need to work through these concepts to see why they are being proposed and are they prejudicial

4. 2.03 FAA s. 43 provides for statutory set-off right for Province

5. 2.09 – Modifications of Approved Obligations – what could be OPG’s rationale for deleting this?

6. 4.02 Adherence Conditions

- Appears that OPG only want to include a confirmation that certificate was sent to Province under Process Agreement.

- What are the implications to the Province of deleting the requirement to advise the Indenture Trustee of the Protection Agreement Maximum and that the issuance does not exceed the Protection Agreement Maximum? Beneficiaries and the Indenture Trustee are not given direct information on Protection Agreement Maximum.

- Agreed that it should be a condition that there has not been a Suspension Notice

7. 5.01 Assignment and Subrogation -

- Shouldn’t the subrogation issue be dealt with separately for the circumstance in which the Province pays on an ongoing basis and does not directly assume the Obligations? Does 5.01 just cover that scenario?

-

8. 5.05 Reps and Warranties – If Province determines to include the representations should be more general (not include references to specific statutes and approvals) and also enforceability must include qualifications – Need more review to compare to ones previously given. However generally in a guarantee, Province does not include reps as OIC clearly authorizes province to enter into guarantee agreement.

(a) Authority. The execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province.
(b) No Conflict. The execution, delivery and performance of this Agreement by the Province do not result in the violation of any Applicable Law.
(c) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Province and constitutes a legal, valid and binding obligation of the Province, enforceable against the Province in accordance with its terms, subject only to (i) a court in the Province of Ontario may not against the Province grant an injunction or make an order for specific performance, make an order for recovery of real or personal property, or issue execution or attachment process in the nature thereof, other than garnishment in certain limited circumstances, (ii) pursuant to section 43 of the Financial Administration Act (Ontario), as amended, where in the opinion of the Minister of Finance of Ontario, X is indebted to the Province or any agency of the Province, the Minister of Finance

of Ontario has the discretion to retain by way of deduction or set-off, out of the money that is due and payable by the Province to X, such sum as such Minister considers fit in the circumstances to be applied against the indebtedness of X, and (iii) pursuant to the Proceedings Against the Crown Act (Ontario), X is not entitled to claim set-off or to make a counterclaim in a proceeding by the Province for recovery of taxes, duties or penalties and is not entitled, in a proceeding of any other nature by the Province, to claim set-off or to make a counterclaim arising out of a right or claim in respect of any taxes, duties or penalties.

9. 6.01 – Delivery of Assumption Notice, etc.
OPG would like to move details from Process Agreement to Protection Agreement. Is it necessary to attach a form or even a draft form of Assumption Agreement at this point? Most likely if Province decides to assume the debt and any other obligations directly, it will have to obtain other internal approvals. The reason we included this now is so that the agreements that the FE enters into would enable such an assumption if the Province determined that it would be appropriate, i.e. there are sometimes provisions that do not permit assignment in these sorts of agreements. See 6.05 of Process Agreement. Also, although a range of Specified Creditors benefit from the security held by Indenture Trustee, not all obligations are created by Master Trust Indenture, etc. so how could there be a global assumption agreement. Some of the timelines in the Process Agreement are too short, i.e. 20 days for Province to decide once it receives particulars of obligations is too short.

10. 7.04 Release of all Collateral - The collateral is key to the Province should it be called upon – on what basis should Indenture Trustee be allowed to release collateral?

11. Suspension Notice v. Termination Notice – Province does not want to be compelled to assume debt in any instance. Province can elect to assume debt if Suspension Notice given.

Termination Notice won't take effect until all amounts are paid so there would not be a reason to assume debt at that point Is OPG concerned that all debt could be paid off for a period of time while the Master Trust Indenture is still in effect for program and Province then terminate the guarantee even though more debt is planned to be issued in future under the MTI. Is this a realistic possibility? They included this in an earlier provision to s. 2.08.

12. Definition of Protection Event. Do not agree to delete "materially" from Protection Event definition. Under (a) (iv) how could an official or a board or commission make or amend a regulation? See question re: OEB?

Process Agreement

1. Parties to Agreement: Consider OPG signing as FSM? Also should FE be a party? Who directly controls and makes FE decisions? Consider "commercially reasonable efforts" requested by OPG throughout. This affects reps and warranties – could there be separate sections from reps and warranties from both.

2. 2.02(d) What would be considered "reasonable" for Province to request in order to enable the Province to assess the nature and extent of its obligations under the Protection Agreement?

3. 2.02(b)(ix) – Discussion with OFA on Friday propose to move this so it is a confirmation in the "process certificate" that no disclosure, press release or other written communication intended for dissemination to third parties that refers to or describes the terms, effect or adherence of or to this process agreement or protection agreement shall not be used or made unless the disclosure is substantially the same as disclosure previous made.

4. 3.04(b) – Should discuss proposed deletion of (b) – is it ok to merge (a) and (b)?

5. 4.01 – if Province determines that this formulation is acceptable, should also add into (b) and (d) the Province and OPG will discuss and address any inaccuracies in the Initial Forecast and further Forecast not just the Financing Plan to the reasonable satisfaction of both parties? Meaning of "accord with the Financing Plan".

6. Election to assume by Province – see above discussion under Protection Agreement.

7. 7.01 – Breach Events

Is there a document by which OPG was appointed FSM – statute says OPG will be appointed unless unable or unwilling? Would a shorter cure period be workable?

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning |
| **Cc:** | Tobias P. Whitfield (MOF) |
| **Subject:** | Fw: Fair Hydro -- Form of ISDA Schedule |
| **Date:** | Tuesday, October 24, 2017 5:36:13 PM |
| **Attachments:** | Fair Hydro – Form of ISDA Schedule.docx |

---

Hi Mike

Although we are not really going to give much input to the terms of the, various agreements etc I am wondering whether it makes sense to have the documentation group involved in this project. I know that Opal came to one of the early meetings as there are going to be quite a few agreements to review.

Perhaps we can discuss this tomorrow?

Thanks
Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mansoori, Nina <nmansoori@torys.com>
Sent: Tuesday, October 24, 2017 17:21
To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: Feldman, Michael; Ramchandani, Rima; Olusoga, Yinka; Saulnier, Brett; Mansoori, Nina
Subject: RE: Fair Hydro -- Form of ISDA Schedule

All,

We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer

immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

# ISDA®

International Swaps Dealers Association, Inc.

# SCHEDULE
# to the
# 1992 Master Agreement

dated as of **[■]**, 2017

between

**[HEDGE PROVIDER]**
("**Party A**"),

and

**[ISSUER]**
**("Party B")**

Part 1 **Termination Provisions.**

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of:

Section 5(a)(v), Not Applicable

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v), Not Applicable,

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

(b) ***"Specified Transaction"*** will have the meaning specified in Section 14 of the Agreement.

(c) The ***"Breach of Agreement"*** provision of Section 5(a)(ii) will apply to Party A and will not apply to Party B.

(d) The ***"Credit Support Default"*** provisions of Section 5(a)(iii) will apply to Party A and will not apply to Party B.

(e) The ***"Misrepresentation"*** provisions of Section 5(a)(iv) will apply to Party A and will not apply to Party B.

(f) The ***"Default under Specified Transaction"*** provisions of Section 5(a)(v) will **[not]** apply to Party A and will not apply to Party B.

(g) The ***"Cross-Default"*** provisions of Section 5(a)(vi) will not apply to Party A and will not apply to Party B.

(h) The ***"Credit Event Upon Merger"*** provisions of Section 5(b)(iv) will not apply to Party A and will not apply to Party B.

(i) The ***"Automatic Early Termination"*** provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(j) ***Payments on Early Termination***. For the purpose of Section 6(e) of this Agreement:

(i) Market Quotation will apply.

(ii) The Second Method will apply.

(k) ***Payments on Early Termination Due to Certain Events***. Notwithstanding Section 6, if Party A is (A) the Affected Party for an Additional Termination Event or a Tax Event Upon Merger, or (B) the Defaulting Party for an Event of Default, paragraphs (i) to (v) below apply:

(i) The definition of ***"Market Quotation"*** is deleted and replaced with the following:

***"Market Quotation"*** means, for one or more Terminated Transactions, a Firm Offer which is:

(1) made by a Reference Market-maker that is an Eligible Replacement;

(2) for an amount that would be paid to Party B (expressed as a negative number) or by Party B (expressed as a positive number) in consideration of an agreement between Party B and the Reference Market-maker to enter into a Replacement Transaction; and

(3) made on the basis that Unpaid Amounts for the Terminated Transaction or group of Transactions are to be excluded but any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of any conditions precedent) after that Early Termination Date is to be included.

(ii) In determining whether or not a Firm Offer satisfies the condition in sub-paragraph (ii)(B) of the definition of "Replacement Transaction", Party B will act in a commercially reasonable manner.

(iii) The definition of ***"Settlement Amount"*** is deleted and replaced with the following:

***"Settlement Amount"*** means, for any Early Termination Date:

(a) if, on or prior to the Early Termination Date, a Market Quotation for a Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally

binding, the Termination Currency Equivalent of the amount (whether positive or negative) of the Market Quotation;

(b) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions has been accepted by Party B and is legally binding and one or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, the Termination Currency Equivalent of the amount (whether positive or negative) of the lowest of the Market Quotations (for the avoidance of doubt, (i) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number and (ii) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value); or

(c) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally binding and no Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B's Loss (whether positive or negative and without reference to any Unpaid amounts) for the relevant Terminated Transaction or group of Terminated Transactions.

(iv) At any time on or before the Early Termination Date at which two or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B must accept the lowest of the Market Quotations. For this purpose, (A) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number, and (B) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value.

(v) If Party B requests Party A in writing to obtain Market Quotations, Party A will use reasonable efforts to do so before the Early Termination Date.

(vi) For the purpose of determining Unpaid Amounts, any payment or delivery obligation which was (or would have been but for Section 2(a)(iii)) required to be performed pursuant to paragraph 2 of the Credit Support Annex shall be disregarded.

(l) ***"Termination Currency"*** shall mean Canadian dollars.

(m) ***Bankruptcy***

(i) Section 5(a)(vii)(2), (7) and (9) does not apply to Party B.

(ii) Section 5(a)(vii)(3) does not apply to Party B for any assignment, arrangement or composition effected by or under the Indenture Documents.

(iii) Section 5(a)(vii)(4) does not apply to Party B for a proceeding or petition instituted or presented by Party A or any of its Affiliates.

(iv) Section 5(a)(vii)(6) does not apply to Party B for (i) an appointment that is made under the Indenture Documents, or (ii) an appointment to which Party B is not subject.

(v) Section 5(a)(vii)(8) applies to Party B only if it applies to Section 5(a)(vii)(1), (3), (4), (5) and (6), as amended.

(n) ***Tax Event and Tax Event Upon Merger***

Section 5(b)(ii) applies but the words "(x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y)" are hereby deleted.

Section 5(b)(iii) applies but Party A will not be entitled to designate an Early Termination Date by reason of a Tax Event Upon Merger if it is the Affected Party.

Section 6(b)(ii) applies but the words "or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party" are deleted.

(o) ***Additional Termination Event*** will apply. The following shall constitute an Additional Termination Event:

(i) It shall be an Additional Termination Event and Party B shall be the sole Affected Party and all Transactions then outstanding shall be Affected Transactions if Party B fails to comply with the requirements of Part 5(o).

(ii) It shall be an Additional Termination Event and Party A shall be the sole Affected Party and all Transactions then outstanding shall be the Affected Transactions if Party A fails to comply with the requirements of Part 5(h).

(iii) It shall be an Additional Termination Event and Party B shall be the sole Affected Party upon an acceleration of the Series [■] Notes under Section **[8.02]** of the Trust Indenture.

(iv) **[NTD: consider including a partial termination provision to facilitate right-sizing interest rate hedges following any unscheduled reductions of the underlying financed amounts]**

Part 2 **Tax Representations. [NTD: subject to Tax review]**

(a) ***Payer Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B will make the following representations.

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

(i) Party A and Party B each make the following representation:

It is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada).*

(c) ***Other representations:*** None made.

Part 3 **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** |
|---|---|---|
| Each Party | Any document required or reasonably requested to allow the other party to make payments under the Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate. | Promptly upon reasonable demand by either party. |

(b) Other documents to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** | **Covered by Section 3(d) Representation** |
|---|---|---|---|
| Each Party | Evidence satisfactory in form and substance to the other party of (i) the authority of the signatory of the party to execute this Agreement **[and Credit Support Annex]** and any Confirmation and (ii) list of the names, true signatures of the signatory of this Agreement or any Confirmation. | Upon execution of this Agreement | Yes |
| Party A | A copy of unaudited financial statements for the most recently ended fiscal year. | As soon as reasonably practicable following a request by Party B to the extent not publically available online | No |
| Each Party | Legal opinion satisfactory to the other Party. | Upon execution of this Agreement | Yes |
| Party B | ISDA Cross-Border Swaps Representation Letter | If requested by Party A, upon execution and delivery of this Agreement. | No. |
| Party A and B | ISDA Canadian Representation Letter #1 | Upon execution and delivery of this Agreement. | No. |

Part 4 **Miscellaneous.**

(a) ***Addresses for Notices.*** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A: **[NTD: ■]**

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
Electronic Messaging System Details: ■
(Only with respect to transactions through this Office)

For any notices with respect to Section 5 and 6 of this Agreement for Party A:

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
E-mail: ■

Address for notices or communications to Party B:

[ISSUER]
c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario, M5J 2Y1

Attn: [■]
Fax: [■]
Email: [■]

with copies to:

[ISSUER TRUSTEE], in its capacity as Issuer Trustee for [ISSUER]

Attn: [■]
Fax: [■]
Email: [■]

Notwithstanding Section 12(a) of this Agreement, service of legal process documents relating to this Agreement may not be delivered by facsimile or by electronic messaging system.

(b) ***Process Agent***. For the purpose of Section 13(c) of this Agreement, neither party appoints a Process Agent.

(c) ***Offices***. The provisions of Section 10(a) will apply to this Agreement.

(d) ***Multibranch Party***. For the purpose of Section 10(c) of this Agreement:

Party A **[is][is not]** a Multibranch Party and may only enter into a Transaction through any of the following Offices:

Party B is not a Multibranch Party.

(e) ***Calculation Agent***. The Calculation Agent is Party A unless (i) otherwise specified in a Confirmation in relation to the relevant Transaction or (ii) a replacement Calculation Agent is designated by Party B as set

forth below. All calculations by the Calculation Agent shall be made in good faith and through the exercise of its commercially reasonable judgment. The calculations and determinations of the Calculation Agent shall (except in the case of manifest error) be final and binding upon all parties. Upon the failure of Party A to perform its obligations as Calculation Agent hereunder within five Local Business Days of Party A receiving from Party B notice of such failure, the sole remedy of Party B will be the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent. For so long as an Event of Default in respect of Party A is continuing, Party B will have the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent, without prejudice to any other remedy to which Party B is otherwise entitled under this Agreement. Upon Party A demonstrating its ability to resume performance of its obligations as Calculation Agent or such Event of Default no longer continuing, Party A may elect to resume its role as Calculation Agent.

(f) ***Credit Support Document***. Details of any Credit Support Document:

In relation to Party A: any Eligible Guarantee,

In relation to Party B: not applicable.

(g) ***Credit Support Provider***. Credit Support Provider means in relation to Party A, any Eligible Guarantor, and in relation to Party B; not applicable.

(h) ***Governing Law***. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to choice of law doctrine).

(i) ***Jurisdiction***. Section 13(b)(i) is hereby deleted and replaced by the following Section 13(b)(i):
"(i) submits to the exclusive jurisdiction of the Province of Ontario."

(j) ***Netting of Payments***. Subparagraph (ii) of Section 2(c) of this Agreement will not apply.

(k) ***"Affiliate"*** will have the meaning specified in Section 14 of this Agreement.

(l) ***Characterization under Program Agreements.*** The parties acknowledging and agree that:

(i) The Master Agreement and this Schedule constitute a "Derivative Agreement" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(ii) Party B is a "Derivative Counterparty" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(iii) Any payments required in connection with the Master Agreement and this Schedule will be "derivative payments" as defined under the Act.

Part 5 **Other Provisions.**

(a) ***Definitions***. Reference is hereby made to the 2006 ISDA Definitions (the "2006 Definitions") as published by the International Swaps and Derivatives Association, Inc. ("ISDA") or to any subsequent update being the then current version of the 2006 Definitions. Any terms used and not otherwise defined herein which are contained in the Definitions shall have the meaning set forth therein, and if not contained in the Definitions, will have the meanings specified in the Supplemental Indenture, either directly or by reference. If there is any inconsistency between this Agreement and the Definitions, this Agreement will govern. If there is inconsistency between a Confirmation and this Agreement or the Definitions, the Confirmation will govern.

For the purpose of this Agreement:

***"Act"*** means the *Ontario Fair Hydro Plan Act, 2017* together with any Regulations in effect thereunder from time to time.

***"DBRS"*** means DBRS Limited and its successors.

***"Eligible Guarantee"*** means an unconditional and irrevocable guarantee by a guarantor that is a principal debtor rather than surety and is directly enforceable by Party B, where either (i) a law firm has given a legal opinion confirming that none of the guarantor's payments to Party B under the guarantee will be subject to deduction or withholding for Tax, (ii) the guarantee provides that, if the guarantor's payments to Party B are subject to deduction or withholding for Tax, the guarantor is required to pay the additional amount necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required, or (iii) if any payment under the guarantee is made net of deduction or withholding for Tax, Party A is required under Section 2(a)(i) to make an additional payment necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required.

***"Eligible Replacement"*** means an entity (i)(A) having the Ratings Event I Required Ratings, or (B) whose obligations owing to Party B under this Agreement (or its replacement, as applicable) are guaranteed under an Eligible Guarantee by a guarantor having the Ratings Event I Required Ratings, and (ii) reasonably acceptable to Party B.

***"Firm Offer"*** means an offer which, when made, was capable of becoming legally binding upon acceptance.

***"Indenture Documents"*** means the Supplemental Indenture together with the Trust Indenture.

***"Local Business Day"*** means a day other than a Saturday, a Sunday or a day banking institutions or trust companies in Toronto, Ontario or Montreal, Quebec are authorized or obligated by law to close, and the definition of ***"Local Business Day"*** in Section 14 is deleted.

***"Moody's"*** means Moody's Investors Service, Inc. and its successors.

***"Relevant Entity"*** means Party A, a guarantor under an Eligible Guarantee or an Eligible Replacement, as applicable.

***"Replacement Transaction"*** means, for any Terminated Transaction, a transaction that (i) has terms which would be effective to transfer to a transferee all of Party A's rights and obligations under this Agreement, which terms are identical to the terms of this Agreement, other than party names, the effective date of the transfer, tax representations and any representations about the status of the substitute counterparty, notice information and account details, or (ii) (A) would preserve for Party B the economic equivalent of any payment or delivery under this Agreement for the Terminated Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date, and (B) has terms which are, in all material respects, no less beneficial for Party B than those of this Agreement, as determined by Party B.

"***Supplemental Indenture***" means the Supplemental Indenture dated as of [■], among Party B as issuer of Series [■] Notes, **[INDENTURE TRUSTEE]**, as Indenture Trustee, and **[List any other parties]**, which supplements the Trust Indenture.

"***Trust Indenture***" means the Trust Indenture dated as of [■], 2017, between Party B, as issuer, and [INDENTURE TRUSTEE], as Indenture Trustee.

(b) ***Equivalency Clause***. For purposes of disclosure pursuant to the Interest Act (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement, which is to be calculated on any basis other than a full calendar year, is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the number of days in the calendar year in which the period for which interest at such rate is payable ends and the denominator of which is the number of days comprising such other basis.

(c) ***English Language***. The parties hereto have requested that this Agreement and the Schedule be drafted in the English language and that all present and future Confirmations be drafted in the English language. Les parties aux présentes ont requis que cette convention et l'Annexe ainsi que toutes les présentes et futures confirmations soient rédigées en langue anglaise.

(d) ***Eligible Financial Contract***. Each Party, with respect to itself, hereby represents and warrants to the other Party, continuing throughout the term of this agreement, that it is its intention that this Contract and each Transaction hereunder shall constitute an "eligible financial contract" within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any other applicable Canadian insolvency legislation.

(e) ***Telephone Recording***. Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

(f) ***No Reliance***. In connection with the negotiation of, the entering into, and the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction hereunder, each party acknowledges and agrees that: (i) each party is acting for its own account and is not acting as a fiduciary for, or a financial or investment advisor to the other party (or in any similar capacity); (ii) each party is not relying upon any communications (whether written or oral) from the other party as investment advice or as a recommendation to enter into this Agreement, any Credit Support Document to which it is a party and each Transaction hereunder (other than the representations expressly set forth in this Agreement), it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (iii) neither party has received from the other party any assurance or guarantee as to the expected results of any Transaction; and (iv) each party has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own independent investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party.

(g) ***Severability***. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(h) ***Credit Rating Downgrade of Party A***

**(1) Ratings Event I:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from DBRS is not at least, respectively "A" or R-1 (low) or better; or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A2 or P-1 or better (such rating thresholds collectively designated as the **"Ratings Event I Required Rating"** and such failure the **"Ratings Event I Trigger"**, Party A shall at its own expense and not later than 30 Local Business Days following the occurrence of the Ratings Event I (so long as the Ratings Event I is continuing):

(X) transfer acceptable Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(1) of the ISDA Credit Support Annex; or

(Y) either obtain an Eligible Guarantee or transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Z) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency.

**(2) Ratings Event II:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case of a Relevant Entity from DBRS is not at least, respectively BBB or R-2 (middle) or better, or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A3 or P-3 or better (such rating thresholds collectively designated as the **"Ratings Event II Required Rating"** and such failure the **"Ratings Event II Trigger"**, Party A shall at its own expense following the occurrence of a Ratings Event II (so long as such Ratings Event II is continuing):

(X) transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) or another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Y) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency, or

(Z) provide Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(2) of the ISDA Credit Support Annex in an amount as required thereunder until (i) such time as the action set out in this sub-paragraph (2)(X) or (2)(Y) above has been taken, or (ii) the Relevant Entity meets the Ratings Event I Required Rating.

(i) ***Successors***. This Agreement and all obligations of the parties hereunder shall be binding upon than respective successors and assigns and shall, together with the rights and remedies, inure to their benefit.

(j) ***Scope of Agreement***. The parties acknowledge and agree that this Agreement will only apply to Transactions entered into in respect of the Series 2016-1 Notes.

(k) ***Counterparts***. This Schedule may be executed in one or more counterparts, either in original or facsimile or pdf form, each of which shall constitute one and the same document and form part of the Agreement. If an executed copy of this Schedule is transmitted by the parties through transmission by facsimile or e-mail in pdf format, this Schedule shall constitute the original document between the parties and the parties hereby adopt the signatures printed by the receiving facsimile machine or computer as the original signatures of the parties.

(l) ***Transfer***. Exception to the Transfer provisions of Section 7 is that consent to transfer shall not be unreasonably withheld as long as the transferee, designated by Party A, is an Eligible Replacement or otherwise satisfies the Rating Agency Condition in respect of the related Rating Agency. In addition, Party A agrees that it will use reasonable commercial efforts to novate each outstanding Transaction hereunder to an Eligible Replacement if it is requested to do so in connection with an assignment of its interests in the Series [■] Notes pursuant to the Indenture Documents.

(m) **[*Foreign Account Tax Compliance Act*.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance

of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement."] **[NTD: subject to Tax review]**

(n) ***Set-off***. Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement and each Confirmation will be made without set-off or counterclaims.

(o) ***Amendments.*** Party B hereby agrees that it will not amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Related Program Agreements if any such amendment, supplementation, modification, restatement or replacement or waiver or consent is material, except with the prior written consent of Party A and satisfaction of the Rating Agency Condition in respect of each Related Rating Agency. Each Related Rating Agency shall be notified by or on behalf of Party B of any nonmaterial amendments, waivers and consents as soon as possible after such non-material amendments, waivers and consents become effective. Any such proposed change to a Related Program Agreement will be subject to Section [13.19] of the Trust Indenture.

(p) ***Limited Recourse:***

(i) Party A is a Specified Creditor (as defined in the Trust Indenture) and its entitlements under this Agreement are subject to the provisions applicable to Specified Creditors under the Trust Indenture. The right of Party A to payments under this Agreement, or the exercise of rights or remedies against Party B under this Agreement is subject to Sections [8.15] (*Limited Recourse*) and [17.01] (*No Petition*) of the Trust Indenture.

(ii) Part 5(p)(i) survives the termination of this Agreement.

(q) ***Non-Petition***. Party A hereby covenants and agrees that it will not at any time institute or encourage against Party B, or join or acquiesce in any institution against Party B of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency, winding-up or similar law for one year and a day after the latest maturing Note (as defined in the Indenture) in connection with any obligations relating to this Agreement or any of the other Related Program Agreements.

(r) ***Party B Pledge***. Notwithstanding Section 7, Party A acknowledges that Party B has or will pledge its rights under this Agreement to the Indenture Trustee for the benefit of the related Specified Creditors under the Indenture Documents and agrees to the pledge. The Indenture Trustee will not be deemed to be a party to this Agreement. However, the Indenture Trustee, acting on behalf of the related Specified Creditors, has the right to enforce this Agreement against Party A. Party A will be entitled to rely on any notice or communication from the Indenture Trustee to that effect.

## Part 6. FX Transaction and Currency Option Transaction Provisions

(a) ***FX Definitions***

(i) Incorporated Into Agreement. The 1998 ISDA FX and Currency Option Transaction Definitions, as published by the International Swaps and Derivatives Association, Inc., (the "FX Definitions") are incorporated by reference into this Agreement. Any terms used and not otherwise defined in this Agreement that are contained in the FX Definitions shall have the respective meanings specified therein (without regard to any amendments thereto after the date of this Agreement).

(ii) Inconsistency. In the event of any inconsistency between the FX Definitions and any other provisions or definitions that are incorporated by reference into this Agreement, the FX Definitions shall prevail with respect to an FX Transaction or a Currency Option Transaction. In the event of any inconsistency between the FX Definitions and the provisions otherwise

contained in this Agreement, those provisions otherwise contained in this Agreement shall prevail.

(b) ***Confirmations.*** Any FX Transaction or Currency Option Transaction into which the parties may before the date of this Agreement have entered, or may in the future enter, where the relevant Confirmation on its face does not expressly exclude the application of this Agreement, shall (to the extent not otherwise provided for in this Agreement) be subject to, governed by and construed in accordance with this Agreement (in substitution for any existing terms, if any, whether express or implied). Each such FX Transaction and Currency Option Transaction shall be a Transaction, and the documents and other confirming evidence (including electronic messages on an electronic messaging service) exchanged between the parties confirming such FX Transaction or Currency Option Transaction shall each be a Confirmation (even where not so specified therein), for the purposes of this Agreement.

(c) ***Payment Instructions.*** All payments to be made in respect of FX Transactions and Currency Option Transactions shall be made in accordance with standing payment instructions provided by the parties (or as otherwise specified in a Confirmation). Any such instructions from a party must be received no later than one Business Day prior to the Value Date or Premium Payment Date (as the case may be) for such Transaction and otherwise be in conformity with standard inter-dealer market practice regarding foreign currency delivery.

(d) ***FX Transaction Novation Netting.***

(i) Automatic Novation Netting. In addition to the settlement netting provisions of Section 2(c) of this Agreement, unless otherwise agreed, if the parties enter into an FX Transaction that is governed by this Agreement through a pair of Novation Netting Offices giving rise to an obligation of a party under this Agreement to pay an amount of currency (a "Currency Obligation") on the same date and in the same currency as a then existing Currency Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such FX Transaction, each such Currency Obligation shall automatically and without further action be cancelled and simultaneously replaced by a new Currency Obligation for such date determined as follows: the amount of such currency that would otherwise have been payable by each party on such date shall be aggregated and the party with the larger aggregate amount shall have a new Currency Obligation to pay to the other party the amount of such currency by which its aggregate amount exceeds the other party's aggregate amount, provided that if the aggregate amounts are equal, no new Currency Obligation shall arise. This paragraph (d) shall not affect any other Currency Obligation of a party to pay any different currency on the same date. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such novation, or (ii) may fail to make changes in any of its books as a result of any such novation.

(ii) "Novation Netting Office" means, as to either party, the office or offices specified in Part 4, Section A in the Schedule and any other office specified from time to time by one party and agreed to in writing by the other party.

(e) ***Currency Option Transaction Discharge and Termination***

(i) Automatic Discharge and Termination of Offsetting Options. Unless otherwise agreed, any Call Option or any Put Option written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option or a Put Option, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of

the last Premium payable in respect of such Currency Option Transactions; provided that such termination and discharge may only occur in respect of Currency Option Transactions:

(1) each being with respect to the same Put Currency and the same Call Currency;
(2) each having the same Expiration Date and Expiration Time;
(3) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
(4) each having the same Strike Price;
(5) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e. where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction which is partially discharged and terminated shall continue to be a Currency Option Transaction for all purposes of this Agreement. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such discharge and termination, or (ii) may fail to make changes in any of its books as a result of any such discharge and termination.

(ii) ***Additional Definitions***

(1) "Call Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to purchase from the Seller at the Strike Price a specified quantity of the Call Currency.

(2) "Put Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to sell to the Seller at the Strike Price a specified quantity of the Put Currency.

*- signature page follows -*

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

| **[HEDGE PROVIDER]** | **[ISSUER]** |
|---|---|
| (Party A) | (Party B) |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |

[Signature Page – ISDA Schedule]

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan; Mike Manning; Gadi Mayman; Carlos Yep; Ronald Kwan; James Devine; John Kim; Anna Strathy; Keley Katona (ENERGY); John Psinas; Scott Nelms (ENERGY); Montgomery, Kaitlin (MOF); Veinot, Cindy (TBS); Mark Donaldson (MOF) |
| **Cc:** | Tobias P. Whitfield (MOF); Tom McKinlay (MAG) |
| **Subject:** | Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt |
| **Date:** | Thursday, October 26, 2017 6:47:31 PM |
| **Attachments:** | 46490618_1.doc |

---

I might not have covered everyone with this email

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Saulnier, Brett <bsaulnier@torys.com>
Sent: Thursday, October 26, 2017 18:36
To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
Subject: Fair Hydro -- Supplemental Indenture for Long Term Debt

All,

Please find attached a first draft of the supplemental indenture for the long term debt, which we just received from Osler. Osler has advised that this draft remains subject to review and comment by the dealers. Please note that Torys/OPG have not yet reviewed.

Thanks,
Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIFAw&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=wg-BuU4xaEuHkeSQCzvYmkrE6TJjwysHH6O4HbLEay0&s=3miKHBE_5DwFFW9jo-9eg_a69TX_nhwcxCpPFQg17rU&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIFAw&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=wg-BuU4xaEuHkeSQCzvYmkrE6TJjwysHH6O4HbLEay0&s=3miKHBE_5DwFFW9jo-9eg_a69TX_nhwcxCpPFQg17rU&e= >

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

# FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE

**between**

**[ISSUER] TRUST**

**by**

**● TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**● TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017**

**AND PROVIDING FOR THE ISSUE OF**
**●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2017-1)**
**OF [ISSUER] TRUST**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 SERIES 2017-1 SENIOR NOTES ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2
2.3 Delivery ..... 3
2.4 Payment of Interest ..... 3
2.5 Payment of Principal ..... 3
2.6 [Redemption and Repurchase ..... 4
2.7 Indemnification by the Issuer ..... 4
2.8 Taxes ..... 5
2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes ..... 6

ARTICLE 3 REPRESENTATIONS AND WARRANTIES ..... 6
3.1 Representations and Warranties of the Issuer ..... 6
3.2 Survival ..... 7

ARTICLE 4 GENERAL ..... 7
4.1 Acceptance of Trust ..... 7
4.2 Confirmation of Trust Indenture ..... 7
4.3 Indenture Trustee Not Bound to Act ..... 7
4.4 Successor and Assigns ..... 7
4.5 Specified Creditors ..... 8
4.6 Waiver ..... 8
4.7 Notice ..... 8
4.8 No Waiver: Remedies ..... 8
4.9 Entire Agreement ..... 8
4.10 Governing Law and Attornment ..... 8
4.11 Expenses ..... 9
4.12 Further Assurances ..... 9
4.13 Limitation of Liability of Issuer Trustee ..... 9
4.14 Execution in Counterparts ..... 10
4.15 Delivery of Executed Copies ..... 10

# ●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2007-1)

**THIS FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE** (this "**Supplemental Indenture**") is made as of ●, 2017, between ●, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and ● **Trust Company of Canada**, a trust company existing under the laws of **[Canada]** (the "**Indenture Trustee**").

**WHEREAS** pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ● (Series 2017-1) (the "**Series 2017-1 Senior Notes**");

**AND WHEREAS** the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## SERIES 2017-1 SENIOR NOTES

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% Senior Notes due ● (Series 2017-1)**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be a Series of Senior Notes as contemplated by the Trust Indenture;

(c) not be divided into Tranches;

(d) be unlimited in principal amount but initially will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

(h) be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(i) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(j) bear interest at a rate of ●% per annum;

(k) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(l) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on ● and ● each year (each, an "**Interest Payment Date**") commencing ●, 2018 in

respect of the Series 2017-1 Senior Notes issued prior to such date **[NTD: Interest Payment Dates to be considered in context of model]**;

(m) **[have an initial interest payment in the amount of $● per $1,000 principal amount payable on ●, 2018;]**

(n) mature on, and have ●, as their Principal Payment Due Date;

(o) have ● as their Principal Payment Default Date;

(p) have ● as their Principal Accumulation Commencement Date;

(q) have a Record Date for each Interest Payment Date that is the ● day preceding each Interest Payment Date;

(r) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(s) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

### 2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

### 2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Senior Notes) will (i) on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date, or (ii) on the day that is two Business Days before each Interest Payment Date, forward or cause to be forwarded to the registered address of each holder of a Series 2017-1 Senior Note as of the Record Date a cheque for such interest, less any taxes required by law to be deducted or withheld, payable to the order of such holder. The payment by such wire transfer or forwarding of such cheque will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid) unless any such cheque is not paid on presentation. Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

### 2.5 Payment of Principal

**[On the] [At least one Business Day prior to the]** Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will

satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

**2.6 [Redemption and Repurchase**

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

**2.7 Indemnification by the Issuer**

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other

than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

**2.8 Taxes**

**[NTD: Subject to tax review]**

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**"), excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other taxes based on or measured by the net income of any Series 2017-1 Noteholder (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**")) as a result of a present or former connection between the recipient and the jurisdiction of the governmental authority imposing such tax (other than any such connection arising solely from the recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii), any interest, penalties and additions to tax) (all such excluded taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a recipient hereunder, the amounts so payable to the recipient shall be increased, and the recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a recipient, as promptly as possible thereafter the Issuer shall send to such recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("**FATCA**") if the recipient of such payment were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with their obligations under FATCA and to determine that such recipient has complied with it's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a recipient expires or becomes obsolete or inaccurate in any respect, the recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

### 2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(f) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;

(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and

(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.

### 3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

## ARTICLE 4
## GENERAL

### 4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

### 4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

### 4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

### 4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 4.5 Specified Creditors

The Issuer and the Indenture Trustee (on behalf of the Series 2017-1 Noteholders) acknowledge and agree that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.15 (Limited Recourse) and Section 17.01 (No Petition).

### 4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

### 4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

### 4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

### 4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

### 4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

### 4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

● **TRUST**, by ● **TRUST COMPANY OF CANADA**, as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Code**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer;

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" is defined in Section 2.7

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

**"Series 2017-1 Canada Yield Price"** means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%;

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" "means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

**From:** Hanslep, Malle (MOF)
**To:** Anna Strathy; Ken Kandeepan; Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Fw: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**Date:** Tuesday, November 14, 2017 7:39:58 AM

---

Hi Anna

I don't know if you have been asked to schedule a meeting yet. Would you pls schedule one for 10 to 1. Or whatever time works given timelines. Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Sent: Monday, November 13, 2017 11:35
To: Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
Subject: RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.

Malle

From: Whitfield, Tobias P. (MOF)
Sent: November-10-17 2:00 PM
To: Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
Subject: RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

-----Original Appointment-----
From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
Sent: November 10, 2017 11:06 AM
To: Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
Subject: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
When: November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Anna Strathy |
| **Subject:** | Fwd: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money |
| **Date:** | Thursday, October 05, 2017 8:06:38 AM |

I think this is just about the same as what I'd just sent with one minor change marked in red, but I may be missing something.

Begin forwarded message:

> **From:** "Thompson, Scott (MOF)" <Scott.Thompson@ontario.ca>
> **Date:** October 5, 2017 at 7:50:43 AM EDT
> **To:** "Bromm, William (CAB)" <William.Bromm2@ontario.ca>, "Orsini, Steve (CAB)" <Steve.Orsini@ontario.ca>, "Imbrogno, Serge (ENERGY)" <Serge.Imbrogno@ontario.ca>, "Angus, Helen (TBS)" <Helen.Angus@ontario.ca>, "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Cc:** "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>
> **Subject: RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money**
>
> Something like this
>
> **From:** Bromm, William (CAB)
> **Sent:** October-04-17 8:30 PM
> **To:** Orsini, Steve (CAB); Imbrogno, Serge (ENERGY); Angus, Helen (TBS); Thompson, Scott (MOF); McLean, David (MOF)
> **Subject:** Re: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
> Some possible edits that reduce your size. Still not 200 but closer (about 250)
>
> The government of Ontario does not agree with the assertions and conclusions expressed in the report on Ontario's Fair Hydro Plan (OFHP).
>
> Since 2003, more than $37 billion has
> been invested in creating clean and reliable electricity generation. Third-party experts confirmed many of the generators in the system can operate beyond the 20-year terms of their contracts, benefiting future ratepayers by reducing the need to finance new generating assets.

Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by matching the cost of current electricity investments with the expected useful life of those investments.

This refinancing is being done in the most effective manner within the electricity system, while ensuring the costs are borne by the beneficiaries ~~of the electricty system~~ - the rate payers - not the tax-base.

The government considered a range of options and sought advice from third-party legal, accounting, financial and energy experts to ensure due diligence was completed. The OFHP financial and accounting framework is appropriate for the intended purpose and ensures the fairness goals underlying the program are achieved in a cost-effective manner.

The Province's financial statements are prepared in accordance with PSAS and will follow PSAS in accounting for the OFHP transactions in 2017-18 and the following years.
As PSAS is set by an independent standard setting body focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.
Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Orsini, Steve (CAB)
**Sent:** Wednesday, October 4, 2017 7:15 PM
**To:** Bromm, William (CAB); Matela, Angelo (CAB); Kwamena, Boafoa (CAB)
**Subject:** FW: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

---

**From:** Thompson, Scott (MOF)
**Sent:** Wednesday, October 04, 2017 7:15:50 PM (UTC-05:00) Eastern Time (US & Canada)
**To:** Imbrogno, Serge (ENERGY); Angus, Helen (TBS); Orsini, Steve (CAB)
**Cc:** McLean, David (MOF)
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

The attached is about 340 words. I really don't think I can make it much shorter than that and get our point across. Let's try to chat in the morning.
Thanks
Scott

---

**From:** Imbrogno, Serge (ENERGY)
**Sent:** October-04-17 6:56 PM
**To:** Thompson, Scott (MOF); Angus, Helen (TBS); Orsini, Steve (CAB)
**Cc:** McLean, David (MOF)

**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
**Sensitivity:** Confidential

Hi Scott,

Given the time and effort we spent preparing the response, I would just call it a response to recommendations but happy to chat further.

Serge

Sent with BlackBerry Work
(www.blackberry.com[blackberry.com])

---

**From:** Thompson, Scott (MOF) <Scott.Thompson@ontario.ca>
**Date:** Wednesday, Oct 04, 2017, 5:37 PM
**To:** Angus, Helen (TBS) <Helen.Angus@ontario.ca>, Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>, Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>
**Cc:** McLean, David (MOF) <David.McLean@ontario.ca>
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

I guess this occurred bcs we didn't call our 2 pager a Response to the Recommendations. So we have a choice to make here: do we simply clarify that the "Response" we gave (2 pager) was our response to the recommendations. Or we can try to trim back the number of words and give her a more focused version. I can take a first run at a shortened version if you think we should do the latter.

---

**From:** Bonnie Lysyk <Bonnie.Lysyk@auditor.on.ca>
**Date:** Wednesday, Oct 04, 2017, 3:27 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Christine Wu <Christine.Wu@auditor.on.ca>
**Cc:** Thompson, Scott (MOF) <Scott.Thompson@ontario.ca>, Angus, Helen (TBS) <Helen.Angus@ontario.ca>, Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>, Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Hi,

Thank you for providing this material. We noted that while you've provide some general government commentary in response to the report that we will definitely read and review for information along with the other comments, feedback and supporting evidence, we did not receive the requested 200 word direct response to the two recommendations in the report.

If you would prefer not to provide this, please let me know. If you would like to provide

direct responses to the recommendations, please do so tomorrow.
Sincerely,
Bonnie

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 2:43 PM
**To:** Bonnie Lysyk; Christine Wu
**Cc:** Thompson, Scott (MOF); Angus, Helen (TBS); Imbrogno, Serge (ENERGY); Orsini, Steve (CAB)
**Subject:** CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
**Sensitivity:** Confidential

Good afternoon,

On behalf of Deputy Thompson, Deputy Angus and Deputy Imbrogno, please find attached:

- A joint-memo in response to the request for feedback on the OAG's *Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*
- The government's response to the Special Report
- Comments and feedback on the Special Report
- Supporting evidence as referenced in the consolidated comments

Thank you,

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Anna Strathy |
| **Subject:** | Fwd: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money |
| **Date:** | Thursday, October 05, 2017 8:04:49 AM |

Scott was in touch with the AG yesterday afternoon, and she thanked him for providing the detailed response and indicated that they would thoroughly review the points raised. She also welcomed the opportunity offered in the cover letter to meet with the three Ministers next week. The reason for the attached is that the AG asked why the 200 word government response that she'd requested wasn't included.

Begin forwarded message:

**From:** "Thompson, Scott (MOF)" <Scott.Thompson@ontario.ca>
**Date:** October 5, 2017 at 7:47:13 AM EDT
**To:** "Bromm, William (CAB)" <William.Bromm2@ontario.ca>, "Orsini, Steve (CAB)" <Steve.Orsini@ontario.ca>, "Imbrogno, Serge (ENERGY)" <Serge.Imbrogno@ontario.ca>, "Angus, Helen (TBS)" <Helen.Angus@ontario.ca>, "McLean, David (MOF)" <David.McLean@ontario.ca>
**Cc:** "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>
**Subject: RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money**

Thanks William. This is helpful, and would get us to within a hair of the word limit.
I would only want to add one phrase from my version – that refinancing is being done from within the electricity system – because that responds to her recommendation that the rate reduction be done in the least costly manner.
We could add that point into your paragraph 4
Thanks
Scott

---

**From:** Bromm, William (CAB)
**Sent:** October-04-17 8:30 PM
**To:** Orsini, Steve (CAB); Imbrogno, Serge (ENERGY); Angus, Helen (TBS); Thompson, Scott (MOF); McLean, David (MOF)
**Subject:** Re: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
Some possible edits that reduce your size. Still not 200 but closer (about 250)

The government of Ontario does not agree with the assertions and conclusions

expressed in the report on Ontario's Fair Hydro Plan (OFHP).

Since 2003, more than $37 billion has
been invested in creating clean and reliable electricity generation. Third-party experts confirmed many of the generators in the system can operate beyond the 20-year terms of their contracts, benefiting future ratepayers by reducing the need to finance new generating assets.

Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by matching the cost of current electricity investments with the expected useful life of those investments.

This refinancing is being done in the most effective manner while ensuring the costs are borne by the beneficiaries of the electricty system - the rate payers - not the tax-base.

The government considered a range of options and sought advice from third-party legal, accounting, financial and energy experts to ensure due diligence was completed. The OFHP financial and accounting framework is appropriate for the intended purpose and ensures the fairness goals underlying the program are achieved in a cost-effective manner.

The Province's financial statements are prepared in accordance with PSAS and will follow PSAS in accounting for the OFHP transactions in 2017-18 and the following years.
As PSAS is set by an independent standard setting body focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.
Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Orsini, Steve (CAB)
**Sent:** Wednesday, October 4, 2017 7:15 PM
**To:** Bromm, William (CAB); Matela, Angelo (CAB); Kwamena, Boafoa (CAB)
**Subject:** FW: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

---

**From:** Thompson, Scott (MOF)
**Sent:** Wednesday, October 04, 2017 7:15:50 PM (UTC-05:00) Eastern Time (US & Canada)
**To:** Imbrogno, Serge (ENERGY); Angus, Helen (TBS); Orsini, Steve (CAB)
**Cc:** McLean, David (MOF)
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About

Fiscal Transparency, Accountability and Value for Money

The attached is about 340 words. I really don't think I can make it much shorter than that and get our point across. Let's try to chat in the morning.
Thanks
Scott

---

**From:** Imbrogno, Serge (ENERGY)
**Sent:** October-04-17 6:56 PM
**To:** Thompson, Scott (MOF); Angus, Helen (TBS); Orsini, Steve (CAB)
**Cc:** McLean, David (MOF)
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
**Sensitivity:** Confidential

Hi Scott,
Given the time and effort we spent preparing the response, I would just call it a response to recommendations but happy to chat further.
Serge

Sent with BlackBerry Work
(www.blackberry.com[blackberry.com])

---

**From:** Thompson, Scott (MOF) <Scott.Thompson@ontario.ca>
**Date:** Wednesday, Oct 04, 2017, 5:37 PM
**To:** Angus, Helen (TBS) <Helen.Angus@ontario.ca>, Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>, Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>
**Cc:** McLean, David (MOF) <David.McLean@ontario.ca>
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

I guess this occurred bcs we didn't call our 2 pager a Response to the Recommendations. So we have a choice to make here: do we simply clarify that the "Response" we gave (2 pager) was our response to the recommendations. Or we can try to trim back the number of words and give her a more focused version. I can take a first run at a shortened version if you think we should do the latter.

---

**From:** Bonnie Lysyk <Bonnie.Lysyk@auditor.on.ca>
**Date:** Wednesday, Oct 04, 2017, 3:27 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Christine Wu <Christine.Wu@auditor.on.ca>
**Cc:** Thompson, Scott (MOF) <Scott.Thompson@ontario.ca>, Angus, Helen (TBS) <Helen.Angus@ontario.ca>, Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>,

Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
Hi,
Thank you for providing this material. We noted that while you've provide some general government commentary in response to the report that we will definitely read and review for information along with the other comments, feedback and supporting evidence, we did not receive the requested 200 word direct response to the two recommendations in the report.
If you would prefer not to provide this, please let me know. If you would like to provide direct responses to the recommendations, please do so tomorrow.
Sincerely,
Bonnie

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 2:43 PM
**To:** Bonnie Lysyk; Christine Wu
**Cc:** Thompson, Scott (MOF); Angus, Helen (TBS); Imbrogno, Serge (ENERGY); Orsini, Steve (CAB)
**Subject:** CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money
**Sensitivity:** Confidential
Good afternoon,

On behalf of Deputy Thompson, Deputy Angus and Deputy Imbrogno, please find attached:

- A joint-memo in response to the request for feedback on the OAG's *Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*
- The government's response to the Special Report
- Comments and feedback on the Special Report
- Supporting evidence as referenced in the consolidated comments

Thank you,
**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca
-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | Fwd: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money |
| **Date:** | Thursday, October 05, 2017 8:44:35 PM |
| **Attachments:** | FHP Report - Consolidated Comments - AG Responses.pdf<br>ATT00001.htm<br>Sample of Email and Document Extracts Not Attributed to Individuals.pdf<br>ATT00002.htm<br>Email re OPA.pdf<br>ATT00003.htm |

---

FYI

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

**From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
**To:** "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, "Anna Strathy" <Anna.Strathy@ofina.on.ca>, "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: FW: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money**

Hi all – see attached/below.
Allison/Pat – can you run the highlighted question by folks for some input?

---

**From:** David Catarino [mailto:David.Catarino@auditor.on.ca]
**Sent:** October 5, 2017 7:07 PM
**To:** McLean, David (MOF)
**Cc:** Christine Wu; Bonnie Lysyk; Angus, Helen (TBS); Thompson, Scott (MOF); Imbrogno, Serge (ENERGY); Orsini, Steve (CAB)
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Hi David,

Please find enclosed the following three attachments:

<!--[if !supportLists]-->1. <!--[endif]-->Our Office's responses to the "Comments and feedback on the Special Report" document.

<!--[if !supportLists]-->2. <!--[endif]-->Samples of email and document extracts that support the bullets in Section 1.2, page 6 of our draft report. This information was requested in the "Comments and feedback on the Special Report" document.

<!--[if !supportLists]-->3. <!--[endif]-->A copy of email correspondence re: OPA accounting between B. Lysyk and C. Veinot we refer to in one of our responses.

Further, we note in one of our responses that we will be making the change requested regarding ASC 980-10-15-2. Given this, would it be fine to eliminate the second bullet on rate-regulated accounting in the government's response?

Sincerely,
David Catarino
Project Manager (647-291-0638)

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Thursday, October 05, 2017 12:55 PM
**To:** Bonnie Lysyk <Bonnie.Lysyk@auditor.on.ca>; David Catarino <David.Catarino@auditor.on.ca>
**Cc:** Christine Wu <Christine.Wu@auditor.on.ca>
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

The Ministry of Energy and the OFA are working on a response to this request. However, given that Energy's Deputy and key ADMs are not in Toronto today, they have noted that the 3:00pm deadline may be difficult to meet. They are doing their best and will provide an update soon.

Thanks,
Dave

---

**From:** Bonnie Lysyk [mailto:Bonnie.Lysyk@auditor.on.ca]
**Sent:** October 5, 2017 11:23 AM
**To:** McLean, David (MOF); David Catarino
**Cc:** Christine Wu
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Who would have the material?

Thx,
Bonnie

---

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Thursday, October 05, 2017 11:21 AM
**To:** David Catarino
**Cc:** Bonnie Lysyk; Christine Wu
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Hi David,

Thanks for the email. As that material is not in the custody of MOF, I will need to loop back with you on whether it can be compiled and delivered by 3:00 today. I've asked folks to look into it and let me know as soon as possible.

Thanks,
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*

Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**From:** David Catarino [mailto:David.Catarino@auditor.on.ca]
**Sent:** October 5, 2017 10:39 AM
**To:** McLean, David (MOF)
**Cc:** Bonnie Lysyk; Christine Wu
**Subject:** RE: CONFIDENTIAL - Response to Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money

Good morning,

We have received and are reviewing the attachments you provided on behalf of Deputy Thompson, Deputy Angus and Deputy Imbrogno. We will provide responses to the comments and feedback attachment this afternoon.

In the meantime, we have one request for additional information.

Please provide detailed supporting calculations for the "August 31 – ENERGY LTEP estimate" in Exhibit 1: OFHP Cost Comparison on the last page of the Consolidated Feedback document. In these calculations, include an estimate for the table field entitled, "Saving if Province funded entire refinancing". Please provide us with this additional information by 3:00 PM today.

Thank you,

cid:image001.png@01D173AD.D3500BF0

**David Catarino, CPA, CA, MAcc**
Project Manager
20 Dundas Street West | Suite 1530 | Toronto ON M5G 2C2
T: 647-291-0638 | Email: David.Catarino@auditor.on.ca

-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report.<br><br>OAG RESPONSE: Wording in report is consistent with public communications per government press release on October 19, 2016, "Today Ontario passed legislation that will rebate the provincial portion of the HST from electricity bills as of January 1, 2017." The FAO Report also refers to this relief as the HST Rebate. This report was reviewed and cleared by the Ministry of Finance, etc. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report.<br><br>OAG RESPONSE: The OPG Trust title being used reflects that it is part of OPG. Trust's name is also consistent with FAO Report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted.<br><br>OAG RESPONSE: No change. Legislation includes accounting terminology such as, "regulatory asset", "variance account", etc. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.<br><br>OAG RESPONSE: The government could have still provided electricity relief to current Ontarians and used the proper accounting under PSAS. No change. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000***. ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request.<br><br>OAG RESPONSE: Sentence changed to say, "The Ministry of Energy signed a contract, with a retainer of $500,000, to receive help from a law firm to provide search services and to compile emails before providing them to us." | Y – please refer to enclosed document titled "20171003 1928" |
| Summary of Concerns | 3 | *"… so* ***IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall.<br><br>OAG RESPONSE: No change because we're referring to a consolidated view of government reporting and not just the IESO as a singular entity. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns and 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing estimates over the thirty year life of the program have been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates.<br><br>OAG RESPONSE: No change, additional support needed to determine whether a change is required. Please provide updated estimate of the $4 billion with supporting calculations and details (request already sent under separate cover). | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted.<br><br>OAG RESPONSE: Change made. The creation of an accounting asset legislated . . . . | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report.<br><br>OAG RESPONSE: Adjustments made to report. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report.<br><br>OAG RESPONSE: Pass on addition. Not relevant to the concerns expressed in this report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers' electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br><br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report.<br><br>OAG RESPONSE: Adjustments made to report. | N |
| 1.1 | 5 | *"~~The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt~~."*<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term.<br><br>OAG RESPONSE: Changed "…disclose the deficit…" to "…show any deficit…" | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure due diligence was completed."<br><br>OAG RESPONSE: No change made. Similar to wording in second paragraph in document entitled "Government Response to OAG Report on The Fair Hydro Plan" sent on October 4, 2017. | N |
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them.<br><br>OAG RESPONSE: No change. Not consulting AG office was working around a risk. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm.<br><br>OAG RESPONSE: Reworded sentence as follows:<br>A few design options other than the final design were considered, but they were rejected either because they would not work or because they would show an increase in the Province's deficit and/or net debt. | Y – please refer to enclosed file titled "Email Evidence re LDC Option" |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page.<br><br>OAG RESPONSE: Example emails to be provided. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted.<br><br>OAG RESPONSE: No change. Reflects proper accounting under PSAS. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.<br><br>OAG RESPONSE: No changes made. This complex model is the first of its kind to be used in Canada. Typically, securitization is done so that debt can be consolidated and refinanced at a lower interest rates for ratepayers, as per the Long Island Power Authority example provided by KPMG. This is not the case in Ontario. The complex structure ensures that there is no expense impact from borrowings and from delaying the cost of having to pay generators under contracts in the financial statements of the Province, IESO and OPG. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG.<br><br>OAG RESPONSE: No change. No planned increase in net expense is factually correct. | N |
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (*see Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates.<br><br>OAG RESPONSE: No change, additional support needed to determine whether a change is required. Please provide updated estimate of the $4 billion with supporting calculations and details (request already sent under separate cover). | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047.<br><br>OAG RESPONSE: The following clarifying footnote has been added to 2045 date:<br><br>Period used by the FAO in calculating the costs. The potential repayment period may extend to 2047 as per the Fair Hydro Act, Part I (see Appendix 2). | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts).<br><br>OAG RESPONSE: Edited the following sentence to remove words "at all":<br><br>However, it is not ~~at all~~ certain that the assets that have been smoothed over the 30-year period will be in use to produce power in the future. | Y – please refer to enclosed reports |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government.<br><br>OAG RESPONSE: No change. See Part V of the Fair Hydro Plan Act. | |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or "stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~ | Y<br>Please refer to enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 Annual Report |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer is a normal rate-setting regulatory practice. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths) that may be shorter than the expected useful life of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>Finally, the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit.<br><br>OAG RESPONSE: No change. We see a parallel. An adjustment to accumulated deficit is reflecting an expense impact. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time.<br><br>OAG RESPONSE: No change. Do not agree with characterization. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.).<br><br>OAG RESPONSE: Content on page 13 refers to much more prescriptive direction over OEB's activities that what is being discussed here. | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted.<br><br>OAG RESPONSE: Noted. However, no change. | N |
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64]<br><br>OAG RESPONSE: Change made. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report.<br><br>OAG RESPONSE: No change. OEB described accurately in report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed<br><br>OAG RESPONSE: No change made. | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.<br><br>OAG RESPONSE: No change. Disagree with the application of the GAAP hierarchy under PSAS. | Y - See hyperlink |
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en<br><br>OAG RESPONSE: No change. Disagree with the application of the GAAP hierarchy under PSAS. | |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements.<br><br>OAG RESPONSE: No change. Report indicates Board approved financial statements in March 2017. | Y – please refer to enclosed document titled "Letter to AG from |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements.<br><br>OAG RESPONSE: No change. Retroactive adjustment made in 2017 to IESO's financial statements for the purposes of positioning the Fair Hydro Plan accounting accounting/financing structure. See attached email from B. Lysyk to C. Veinot on September 22, 2017 and September 25, 2017 response from C. Veinot to B. Lysyk. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts.<br><br>https://www.ontario.ca/laws/statute/98e15<br><br>https://www.ontario.ca/laws/statute/98o15<br><br>OAG RESPONSE: No change. | Y – see hyperlinks |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed.<br><br>OAG RESPONSE: No change. See guidance extracted below from Section 2500 under PSAS.<br><br>.06 *Government financial statements should consolidate governmental units line-by-line on a uniform basis of accounting after eliminating inter-governmental unit transactions and balances.* [MAY 1999]<br>.07 The basic steps of consolidation required by paragraph PS 2500.06 are as follows:<br>(a) The accounting policies of governmental units are conformed to those of the government.<br>. . . . | N – Public Sector Accounting Standards |
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed.<br><br>OAG RESPONSE: No change. Legislation includes accounting terminology such as, "regulatory asset", "variance account", etc. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "..their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified.<br><br>OAG RESPONSE: No change. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid.<br><br>OAG RESPONSE: No change. Repayment arrows included in chart. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid.<br><br>OAG RESPONSE: No change. Repayment arrows included in chart. | N |

CONFIDEN... Forms Part of Audit Working ... Files

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee.<br><br>OAG RESPONSE: No change. Guarantee is not yet in place. | N |

CONFIDENTIAL
Forms Part of Audit Working Paper Files

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Sample of Email and Document Extracts Not Attributed to Individuals**

- In the alternative, the Province (through the OFA/OEFC) could borrow the required amounts each year, likely at a lower cost.
- Hopefully they'll come to the conclusion that it can be financed by the Province via OEFC, rather than externally, as that would be a lot simpler and cheaper.
- The only way around that is a direct guarantee of principal and interest payments from the Province to backstop every individual borrowing that the entity would do, and if you're going that rout, why would you enrich investors and bankers when it's provincial debt anyhow?
- There was also a brief aside from KPMG and Pelino on how the accounting would work if a third party financial institution got in the middle of this, which was thought to be feasible from a procurement perspective, but way more costly than a government financing of the deferral. As such, folks dismissed this option at the meeting, but I wanted to mention it should it be brought up again.
- They noted also the extra costs here are very large (interest charges in the billions) and not clear how those would survive a VFM analysis, whether by the OEB (which we understand has rejected some of the proposed energy infrastructure projects, on the basis that the cost-benefit is too negative), by the AG or by the FAO.
- From a consolidated perspective, I think this concept results in a fiscal hit as based on my current knowledge of the structure. I think the province would have to expense all of the costs in the GA and would not be able to set up a receivable or a rate regulated asset for the costs to be financed and then collected from the rate payers in the future.
- The focus on the accounting treatment is based on the impact to the consolidated financial statements of the Province. IESO is a consolidated entity of the Province and follows Public Sector Accounting Standards. As such, IESO does not follow rate-regulated accounting (no such concept exists in PSAS). Therefore, based on the proposal, it is likely that the difference between the amounts paid to the producers and the amount collected from the ratepayers (which would no differ), will be an expense in the period (e.g. an increase to the deficit of the Province). In addition, the amount of interest incurred on the new debt would also be an expense of the Province (e.g. an increase to the deficit of the Province.).
- "Desire to be involved" was never a criteria for this plan…why not compel the OEB to adhere to the legislation and write them in to limit their involvement to ensuring the recovery is as per allowed in the legislation (no ability to alter or really make any decision other than the legislation and subsequent regulation are being followed). Legislation and regulation that directs the OEB to do things is standard practice and is not something that the OEB can determine or dictate.
- The Auditor General has raised concerns regarding the appropriateness of reporting rate regulated assets on the IESO's books under public sector accounting standards, which may lead to a qualified audit opinion on the consolidated financial statements of the Province.
- I know that the AG may not like that, but we've go to pick our poison, don't we…and the AG will likely comment as has been done in the past about rate-regulated accounting and how truly independent is the OEB.
- …PSAB does not recognize rate-regulated accounting, and that the AG would very likely not accept trying to use a different account standard to support recording a regulatory asset.
- I believe there is a risk for the AG to refuse rate regulated accounting under PSAB.
- I believe it is important for IESO to recognize the economic impacts of rate regulation in 2016 under PSAB.
- In developing our Energy plan, the government received advice from large accounting firms on the requirements needed to support it. We are working to meet those requirements as we draft the legislation and finalize accounting decision. The phrase finalize accounting decisions seems to downplay the significance of the outstanding actions. If they aren't able to achieve the intended fiscal impact, they will not proceed with the proposal and MOE has to consider alternative forms of GA relief.
- I still believe that absent a rate regulator or a governing body approving the rates, then there is no recognition of regulatory asset. Since the MOE can change the rule, I would suggest that the OEB Act be amended requiring the OEB to oversee the GAM recovery.

CONFIDENTIAL
Forms Part of Audit Working Paper Files

**Bonnie Lysyk**

**From:** Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
**Sent:** Monday, September 25, 2017 5:52 PM
**To:** Bonnie Lysyk
**Cc:** Bill Pelow; Barry Neilson; Susan Klein
**Subject:** RE: OPA Accounting

Bonnie – thanks for the follow up note. We'll take a look at it and get back to you.

Cindy

No additional comments Received.

**From:** Bonnie Lysyk [mailto:Bonnie.Lysyk@auditor.on.ca]
**Sent:** September 22, 2017 4:34 PM
**To:** Veinot, Cindy (TBS)
**Cc:** Bill Pelow; Barry Neilson; Susan Klein
**Subject:** OPA Accounting

Hi Cindy:

I am following up on your comment from our meeting this week regarding the work my Office performed on the Ontario Power Authority (OPA) asset and liability balances that was raised in our 2013 and 2014 Audit Planning Report and our communication of the results of the review with OPCD.

In the 2011/12 Public Accounts, we included an $81M SUD item for the Other Liabilities balance that OPA was recording on their financial statements because the financial statements indicated that these balances were rate regulated balances.

During the 2012/13 audit, this Other Liabilities balance was $310.206M. We reviewed OPA's accounting and the Other Liabilities balance in detail with OPCD - Bharat. From this review we gained a thorough understanding of the RPP and the OPG variance accounts reflected in the Other Liabilities balance that arose from transactions between OPA, IESO, OPG and the LDCs.

This additional information enabled us to remove this issue/item from our SUD. We confirmed that the **Other Liabilities balance was not rate-regulated**. **This Other liabilities balance represented the net payable to generators** as a result of electricity consumed by rate payers that were settled in April 2013. The removal of the SUD item was discussed in detail with OPCD (Bharat Patel, and Barry worked closely together on this item, and together they jointly agreed on the SUD removal). Additional input was received from OPA's financial reporting staff and OPA's audit partner from KPMG.

Regarding the government's recent communication in the August press release for the Public Accounts:

. "Further, before the Ontario Power Authority (OPA) merged with IESO in 2015, the OPA used the same accounting presentation in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time."

This is not correct. OPA disclosed components of the market accounts in their notes to their statements and recognized certain balances on a net basis versus the gross basis. As a result, when OPA was consolidated, there was no rate regulated asset on the government's consolidated financial statements, only a net payable to generators for electricity already used by ratepayers. However, the market accounts were reported on a gross basis by the IESO for the first time in its December 31, 2016 financial statements.

CONFIDENTIAL
Forms Part of Audit Working Paper Files

Have a good weekend,

Bonnie

Bonnie Lysyk
Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario, M5G 2C2
1-416-327-1326

-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

CONFIDENTIAL
Forms Part of Audit Working Paper Files

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | Fwd: Consolidated comments |
| **Date:** | Friday, September 29, 2017 7:03:29 PM |
| **Attachments:** | AG FHP Report - Consolidated Comments - Sept 29 2017 650pm.docx<br>ATT00001.htm<br>Government Response to AG FHP Report_Sep29-17 v4.1.docx<br>ATT00002.htm |

---

For your review and comment, consolidated comments on the AG's report and a draft government response.

Please send me your comments and I will respond to Dave/Martin on behalf of the OFA.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** September 29, 2017 at 6:57:40 PM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> **Subject: Consolidated comments**
>
> Hi all,
> Thanks very much for getting me your comments. I've attached the consolidated version that we can review over the weekend and discuss on Monday. I did my best to put it in chronological order rather than in order of ministry/agency. Figured this would help when reviewing (i.e., to spot overlap, etc).
>
> Also re-attaching the consolidated government response that Martin shared earlier this evening.
> Thanks,
> Dave
> **David McLean**
> *Executive Assistant*
> *and Special Policy Advisor*
> Deputy Minister's Office
> Ministry of Finance
> 416-327-0192
> david.mclean@ontario.ca

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| General | Throughout | ENERGY (ESPD) | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the AG report. | N |
| | Several | OPG | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed. | |
| Key Issue | 1 | OPCD | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N -- Legislation – already in the report |
| Summary of Concerns | 2 | OFA | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by (specified) electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | ENERGY (LSB) | Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 4,063 documents, as of September 26, 2017. The Ministry doesn't intend to spend more than 60,000 on this request. | TBD |
| Summary of Concerns | 3 | ENERGY (LSB) | *"… so the government needs to borrow cash to cover the shortfall"*<br><br>This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | | |
| Summary of concerns | 3 | OPCD | The transaction resulting in the stranded debt and this transaction are not the same, so suggesting the accounting for the two transactions should be the same is misleading. | Y -- March 31, 2000 consolidated financial statements |
| Throughout | 3, 10 | OFA | *"Applying the government's complex accounting/financing structure could result in Ontarians paying extra interest costs over 30 years that could total up to $4 billion more than necessary"*<br><br>Accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May and OPG's borrowing costs are now forecast to be lower than original estimates. | |
| Summary of Concerns | 3-4, 11 | ENERGY (ESPD) | The AG report states that the collection of the Debt Retirement Charge (DRC) and Ontario Fair Hydro Plan (OFHP) future recovery are similar in that the payments associated with each were/will be made "after the fact". Furthermore, the report states that the same accounting that was applied to the DRC should be applied to the OFHP given the similarity.<br><br>There is, however, an important difference between the DRC and the OFHP. Namely, the DRC was implemented to recover general debt with no specific recovery schedule. The opposite is true for the OFHP, with the debt associated with specific generating assets recovered over their forecast operating lives (see comments below on operating lives). Therefore it is not the case that the accounting treatment that was applied to the debt related to the DRC need be applied to the debt associated with GA refinancing under the OFHP.<br><br>Suggest revising the AG report content accordingly. | N |
| | 3, 9, 11 | OPG | Basis to create "legislated asset" and comparison to Ontario Hydro Stranded Debt. There is a key difference:<br><br>STRANDED DEBT – Was recognition of an existing over valuation of Ontario Hydro assets that, upon the company's break up and recapitalization, reflecting fair values at the time, had no future value to electricity consumers | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | OFHP Asset – represents the additional payment by customers today that will benefit future customers. The OFHP is a way to smooth those payments streams out to ensure ratepayers are fairly paying their fair share of current and future assets. | |
| Summary of Concerns | 3, 10 | ENERGY (ESPD) | The AG report concludes that are a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP. The FAO calculated this figure as the difference between financing at 5% (i.e., its assumed weighted average interest rate) and 4.5% (i.e., its assumed provincial borrowing rate) on interest payments of $21 billion (which was also quoted by the AG).<br><br>Note: No edits to the text are required, this comment is included for internal use only. | N |
| Summary of concerns | 4 | OPCD | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect. | N-- Legislation – already in the report. |
| Summary of Concerns | 4 and throughout | ENERGY (ESPD) | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax).<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br>Suggest correcting this reference throughout the AG report. | N |
| Summary of Concerns | 4 and throughout | ENERGY (ESPD) | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | Suggest including the two paragraphs from this cell in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | |
| Summary of Concerns | 4 and throughout | ENERGY (ESPD) | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | OPCD | The interpretation of "affect the fiscal plan" – the goal was never not to impact Ontario's reported net debt. | N |
| 1.2 | 6 | OPCD | The design options were not all rejected because they would show an increase in the deficit or net debt | ? – emails re: having the LDCs finance the shortfall |
| 1.2 | 6 | OPCD | We haven't been able to find an email from OPCD that aligns with the second bullet so far – to determine whether to ask the OAG to confirm the source of these emails. | |
| 1.3.1 | 7 | OPCD | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS | N |
| | 7 | OPG | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | ENERGY (LSB) | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"* | TBD |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by Ontario Financing Authority (OFA) in borrowing money for its equity infusions into OPG. Note: This might be an accounting issue rather than a legal issue. | |
| 1.3.1 | 8 and Figure 3 | ENERGY (ESPD) | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | OPG | Factual matter – AG report states the OFHP will be finalized and completed by 2045. Believe the correct end date is 2047. | |
| 1.3.2 | 9 | ENERGY (ESPD) | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts).<br><br>Suggest also removing the reference to future ratepayers not owing anything until they consume electricity in the future. | TBD |
| 1.3.2 | 9 | OPCD | The statement is made "key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset". This is factually incorrect. It does not matter what an item is labeled. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| 3.0 | 11 | OFA | The report makes a comparison between the OFHP and the OEFC stranded debt. There are however crucial differences, the latter was already incurred when the restructuring took place. In the case of the former the difference between what is collected and what will be paid out to the generators is going to be set up as an asset and in accordance with the accounting definition generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. The DRC represented the unbundling of a portion of the debt service costs that represented the effective amortisation of cost recovery of the debt incurred to cover the cost to invest in long-lived assets. This was a normal practice and would have been very unusual to recover the investment capital outlay in the years invested from those ratepayers, as unfair as the benefit of those assets would be in place for decades. As such, it was fair to incur debt and recover those costs over time, including as continued on through the DRC post-1999.<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). | OEFC 2016-17 Annual Report |
| 3.0 | 11 | OPCD | The penultimate paragraph notes "and included debt and the expenses related to it in the Province's consolidated financial statements". This statement in incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated surplus. | Y -- March 31, 2000 consolidated financial statements. |
| | 12 | OPG | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | OPG | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on | |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | OPCD | The second paragraph states "one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…" This statement is factually incorrect. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers.***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. | |
| | 13 | ENERGY (LSB) | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | TBD |
| 4.4 | 14 | OPCD | The second sentence begins "so by legislating the accounting…" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. | N -- Legislation – already included in report |
| 4.4 | 14 | IESO | Change was a deviation from Public Sector Accounting Standards (PSAS). | Y |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity is entitled to consult another accounting standard. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.<br><br>Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 15 | OPCD | The third paragraph notes "Our research has confirmed that the IESO is the only…" is factually incorrect. The Ontario Power Authority reported rate regulated assets. As an example, the December 31, 2008 financial statements are attached. The Ontario Power Authority was consolidated on a line by line basis in the consolidated financial statements of the Province. | Y- December 31, 2008 financial statements |
| 4.5 | 15 | IESO | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | TBD |
| 4.5 | 15 | IESO | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Ministry/Agency Source | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|---|
| | | | | |
| 4.6 | 15 | OPCD | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. | N -- Public Sector Accounting Standards |
| 4.6 | 15 | OPCD | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. | N -- Legislation – already included in report |
| Figure 1 | 1 | OPCD | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | OPCD | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | OPG | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | |

## *Exhibit 1*: OFHP Cost Comparison

| | Interest | Debt | Total | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 20.3 | 45.4 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 18.4 | 39.4 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 12.8 | 31.1 | 18.5 | n/a |
| | | | | | |
| *Cost data included in Auditor General report references FAO report and contains the same values | | | | | |

DRAFT

**WORKING DRAFT – GOVERNMENT RESPONSE TO AGO REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and recommendations expressed by the Office of the Auditor General (OAG) in its report entitled *The Fair Hydro Plan: Concerns About Fiscal transparency, Accountability and Value For Money*.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. Ontario's Fair Hydro Plan (OFHP) has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from the reduction.

Since 2003, Ontario has invested nearly $50 billion in the electricity system, including more than $35 billion in electricity generation to ensure the system is clean and reliable. The costs of these investments are funded in part through the Global Adjustment (GA). The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG assertion, many of these generators will be able to operate past their contract term, meaning that generating assets are expected to have ongoing useful life and will benefit future ratepayers by reducing the need to finance the development of new generating assets.

To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG assertion, the financial and accounting framework used to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

Ontario Power Generation (OPG) is beginning the process of raising funds to finance these deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than estimated in the report of the OAG. Total borrowing estimates for the program has been revised down substantially by government since the Financial Accountability Office (FAO) released its report in May 2017 and OPG's borrowing costs are now forecast to be lower than original estimates.

With respect to the Province's financial statements, they are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS) and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector and PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The Government disagrees with two fundamental assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*.

Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does provide the criteria in its entirety, which is as follows:

> *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers.***

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of another government organization of the Ontario government is contradictory to accepting the use of rate-regulated accounting by OPG and Hydro One, both are regulated by the OEB and whose results are and have been included in the consolidated financial statements of the Province of Ontario, using rate-regulated accounting.

The OAG states that the Province's planned accounting inappropriately transfers long-term accountability for higher electricity bills to future governments. The accounting, which will be determined once the transaction is complete, will reflect the economic substance of the transaction in accordance with PSAS. In addition, the policy decision regarding the allocation of the cost of OFHP to the ratepayers and to the taxpayers is a decision of the current government. The accounting is expected to reflect that allocation decision. A decision of a future government to, for example, move the cost of all of OFHP to the taxpayer, is a decision with economic consequences and therefore, accounting recognition. The report of the OAG suggests that such a decision has no consequences or fiscal impact.

In closing, Ontario's Fair Hydro Plan is delivering the single-largest reduction in electricity rates in the province's history. The plan operates under a financial and accounting framework that is appropriate for the intended purpose and ensures that the fairness goals are achieved in a cost-effective manner.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Cc:** | Anna Strathy |
| **Subject:** | Fwd: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 2:08:53 PM |
| **Attachments:** | Blackline_24180663v1 - 24180663v3.pdf<br>ATT00001.htm |

---

Are all of you OK with this? If you are, I'm fine, too, but I'm having trouble reading it with all of the markups and black lines.

Gadi

Begin forwarded message:

**From:** "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>
**Date:** September 26, 2017 at 12:18:07 PM EDT
**To:** "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>
**Cc:** "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
**Subject: Draft Fees Regulation**

Hi Gadi,
I hope NYC is going well and you are finding air conditioning.
We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
  - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've

outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

<!--[if !supportLists]--><!--[endif]--><!--[if !supportLists]--><!--[endif]-->On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**CONFIDENTIAL**
**FOR DISCUSSION PURPOSES ONLY**

# ONTARIO REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

## FEES

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"comparison fees" means ~~typical fees~~**market comparable fees, expressed as a per annum percentage rate,** charged by ~~[service providers?~~**asset** managers~~?]~~ ~~in Ontario~~ **in Canada and any other jurisdiction as may be determined by the Board** for services that are similar to the services provided by the Financial ~~Service Manger~~**Services Manager** under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds ~~in Ontario~~,

(b) the scope of the services provided, ~~and~~

(c) the level of the services provided**, and**

**(d) the amount of assets under management**;

**"forecast interest rate" means, in respect of each tranche of funding obligations, an interest rate forecast to be applicable to such tranche of funding obligations after taking into account (i) the interest rate for debt of or guaranteed by the Province of Ontario with a corresponding term or duration, (ii) the estimated credit spread for such tranche of funding obligations with a comparable term and based on the type of instrument and risk of the issuer, and (iii) anticipated fees and commissions expected to be payable in connection with the issuance of such tranche of funding obligations.**

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year~~, other than any refinancing~~;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances**, as** at **12:00 am on** the ~~start~~**first calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities,

2

B = the sum of the balances**, as** at **11:59 pm on** the ~~end~~**last calendar day** of the month**,** of the principal amount of all **outstanding** funding obligations ~~incurred by~~**for all** financing entities.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to **the management and administration of financing entities and the investment asset, including in relation to** funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) ~~For the purposes of subsection 19 (3) of the Act, fees may be~~**Out-of-pocket costs and expenses of the financing entities incurred by the Financial Services Manager on behalf of the financing entities and for which the Financial Services Manager is entitled to reimbursement under a** management agreement with **such financing entity shall not constitute a fee** established and charged by the Financial Services Manager ~~to financing entities for the recovery of costs and expenditures, as provided for in section 7.~~**under subsection 19(3)**

**of the Act.[1] The costs and expenditures of the financing entities referred to in this subsection (3)** may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations**;**

2. **Banking fees, including structuring fees or work fees;**

3. Fees of issuing and paying agents for funding obligations**;**

4. **Fees of trustees;**

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns**;**

6. Fees of legal counsel**;**

7. **Rating agency fees; and**

8. Filing or registration fees.

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those provided for under this ~~R~~egulation.

**Base fee, 2018 and 2019**

**3.** Subject to section 5.1, the base fee for a month in the ~~year~~**calendar years** 2018 **and 2019** shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation greater than $10 billion**

**4.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~**2019** if the average annual funding obligation for the preceding year was greater than $10 billion.

**[1] These represent third party costs and expenses of the financing entity, not part of the fees that OPG is charging the financing entity. From time to time, OPG may have to pay these upfront costs on behalf of financing entities but they will be a pass-through cost for which OPG would simply be reimbursed by the financing entity. Other than OPG's fees, the costs and expenditures of financing entities are not subject to OEB review under the Act but rather are recoverable as expenses through the CEA (and through IESO during the moratorium). Subsection (3) in this draft was added for greater certainty to ensure there was no misunderstanding.**

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

**Base fee, after ~~2018,~~2019, average annual funding obligation $10 billion or less**

**5.** (1) This section applies for the purpose of calculating the base fee for a month in any year following ~~2018~~2019 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

4

B = the average monthly funding obligation for the preceding month.

**Board review of base fee**

**5.1** If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee. If the Board refuses to approve the proposed base fee submitted by the Financial Services Manager under section 9, the Board shall provide its reasons for such refusal and ~~may~~ make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees~~.~~ and based on the methodology used in the formulas set out in section 3, 4 and 5.

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula~~:~~ (which in respect of individual tranches may result in a negative number):

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite the circumstances in Column 2 of the Table:

| Item | Column 1<br>Circumstances | Column 2<br>Rules |
|---|---|---|
| 1. | The average annual funding obligations are $10 billion or less. | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| 2. | The average annual funding obligations are greater than $10 billion. | The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. |

**Board review of variable fee** 5

**6.1** If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is ~~[unreasonable]~~**not consistent with market comparable forecast interest rates**, the Board may refuse to approve the proposed fee**. If the Board refuses to approve the proposed variable fee submitted by the** Financial Services Manager **under section 9, the Board shall provide its reasons for such refusal** and ~~may~~ make recommendations to the Financial Services Manager regarding the forecast interest rate that is ~~reasonable.~~**consistent with market comparable forecast interest rates.**

~~**Fees for costs and expenditures**~~

~~**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.~~

~~(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:~~

~~1. Underwriters or selling agents for funding obligations.~~

~~2. Banking fees.~~

3. ~~Fees of issuing and paying agents for funding obligations.~~

4. ~~Fees of trustees.~~

5. ~~Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.~~

6. ~~Fees of legal counsel.~~

7. ~~Filing or registration fees.~~

8. ~~Fees of any third party independent consultants required to be retained under the Act.~~

~~**Board review of fees for costs, expenditures**~~

~~**7.1** If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.~~

**Charging of fees**

**8.** (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee is a negative amount, it shall be deducted from the base fee payable in the following calendar year in twelve equal monthly instalments.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

**Submissions to Board re fees**

**9.** (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section ~~5.1, 6.1~~**5.1** and ~~7.1~~**6.1.**

(2) The first submission **for proposed fees to be charged for a two year period commencing in 2018** shall be made no later than [October 31, 2017].

(3) ~~The submission for each calendar year starting with 2019~~**Submissions for proposed fees to be charged for a two year period commencing in 2020 and for every two year period thereafter** shall be made no later than [120 days] before the start of the **applicable two** year **period**.

(4**) Submissions to amend the proposed fees for a month in any year following approval of the proposed fees for any two year period may be made from time to time but no more frequently than once in any 12 month period and no later than 120 days before the start of the year in which such fees are proposed to be effective.**

**(5**) If the Board makes recommendations as described in section ~~5.1, 6.1~~**5.1** or ~~7.1,~~**6.1,** the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees;

(b~~)~~ ~~a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;~~

(~~c~~) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered; **and**



(~~d~~**c**) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations~~; and~~**.**

(~~e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities]~~ **6) Until the Board has approved the fees in respect of any two year period, the fees approved for the prior two year period shall remain in effect.**

**Board approval, general**

**10.** (1) ~~The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.~~

~~[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]~~

~~(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.~~(3) For the purpose of determining whether to approve a proposed fee~~,~~ **described in section 5.1 or 6.1,**

**(a)** the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee~~.~~**; and**

(~~4) For the purpose of determining whether to approve a proposed fee,~~ **b)** the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

[OLC Note re DEFERRAL ACCOUNT:
1. You included the following instruction that would require the FSM to establish a deferral account -- what is the authority for imposing this requirement? Recall that in subs. 34 (1) of the Act, the Board is given authority to require that the FSM maintain specific accounts.

2. ENE LSB note: *Necessity of this provision to be discussion with the OEB given that fees will be recovered as a financing entity expense through the Fair Hydro program and not as part of the fees to be approved by the Board.*]

*[If needed, deferral provision could be along the following lines: The Financial Services Manager shall establish a deferral account in connection with subsection 19 (3) of the Act that records costs incurred by the Financial Services Manager in providing services referred to in section 1 during the period from July 1, 2017 to the day before the date of the Board's first order under subsection 19 (3) of the Act.]*

[OLC Note re FINANCE AMOUNT: You included the following instruction, but I think this more properly belongs somewhere in section 5 of O. Reg. 206/17? In fact, are these fees not already covered in that section (perhaps under "financing entity expenses"?). Please confirm: *Fees established by the Financial Services Manager and approved by the Board, and any applicable taxes on such fees, shall be included in the definition of "expenses" for the purposes of determining finance amounts under the Act.*]

*[Notes Re: Determining Fees:*

*(1) An alternative approach involves the Board approving the initial base fee and variable fee, with any changes to those fees being triggered by the FSM submitting to the Board proposed amendments to those fees (or the Board triggering a review on its own initiative (not more than once per year). However, because interest rates (and hence forecast interest rates) change over time (and can change even within a year), consider whether variable B of the variable fee should be approved annually. Similarly, because trends for "market comparable fees charged by service providers for similar services" change over time, consider whether variable A of the base fee should be approved annually.]*

*(2) Once every three years after the Board has approved the fees submitted by the Financial Services Manager under section 3, or more frequently if the Board requires but not more frequently than annually, the Board may require the Financial Services Manager to engage, on behalf of and at the cost of the financing entities, a third-party independent consultant to review and advise as to the appropriate benchmarks and range of values for [annual rates?] used for the purpose of determining the base fee and forecast interest rates used for the purposes of determining the variable fee and shall give due consideration to such advice.]*

**Commencement**

**x. This Regulation comes into force on the day it is filed.**

Document comparison by Workshare Compare on September-23-17 6:39:45 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/1 |
| Description | #24180663v1<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24180663/3 |
| Description | #24180663v3<TorysAtWork> - Fair Hydro Fee Regs (Torys Comments) |
| Rendering set | Firm_Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 70 |
| Deletions | 58 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 144 |

**From:** Ken Kandeepan
**To:** Gadi Mayman; Mike Manning; Ronald Kwan; Anna Strathy; Carlos Yep; James Devine
**Subject:** Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Thursday, November 09, 2017 6:49:02 AM
**Attachments:** #46682211v3_LEGAL_1_-_Change of Law Protection Agreement.docx
ATT00001.htm
Compare.pdf
ATT00002.htm
#46684849v3_LEGAL_1_-_Change of Law Process Agreement.DOCX
ATT00003.htm
Compare.pdf
ATT00004.htm

---

For the meeting today

Thanks

Ken k

Begin forwarded message:

> **From:** LEE John -TREASURY <john.s.lee@opg.com>
> **Date:** November 9, 2017 at 2:52:50 AM EST
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>, LADAK Lubna -TREASURY <lubna.ladak@opg.com>, MAUTI John -FIN & C CTRL <john.mauti@opg.com>, "LAURETA LAPIRA May -TREASURY" <may.lapira@opg.com>, LIU Sheen -TREASURY <sheen.liu@opg.com>
> **Subject: Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement**
>
> As requested
>
> Sent with BlackBerry Work (www.blackberry.com)
> ---
> From: "Sebastiano, Rocco" <RSebastiano@osler.com>
> Sent: Nov 9, 2017 2:12 AM
> To: "Ramchandani, Rima" <rramchandani@torys.com>; "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
> Cc: "Feldman, Michael" <mfeldman@torys.com>; "Mansoori, Nina" <nmansoori@torys.com>; "Saulnier, Brett" <bsaulnier@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; "Milligan, Peter" <PMilligan@osler.com>; "Fullerton, Rick" <RFullerton@osler.com>; "'Persaud, Donnie - Debt Capital Markets'" <Donnie.Persaud@cibc.com>; "Adalja, Sunil" <Sunil.Adalja@cibc.com>; "Maciel, Andrew" <Andrew.Maciel@cibc.com>; "'Benaiah, Ian'" <ian.benaiah@rbccm.com>; "'Khan, Nur (nur.khan@rbccm.com)'" <nur.khan@rbccm.com>; "'brent.r.taylor@rbccm.com'" <brent.r.taylor@rbccm.com>; "Niehaus, Katrina" <Katrina.Niehaus@gs.com>; "Delaney, Brian" <Brian.Delaney@gs.com>; "Conner, Robbin" <Robbin.Conner@gs.com>
> Subject: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
>
> *** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
> ---
>
> Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.
>
> The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.
>
> Regards, Rocco?????
> [cid:image001.gif@01D358FE.53C31E30]
>
> Rocco Sebastiano
> Partner
>
> 416.862.5859
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> rsebastiano@osler.com
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image002.gif@01D358FE.53C31E30]<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.osler.com-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3DmRjGx-252BUUa3bVQCqwTcdPwHEUpB-252FG8-252FeLD0tIL33rZOo-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=bWJbuBRlvmjXithHlGfb_S07BYO__GhnpGveRNbzew0&e= >
>
> From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
> Sent: November-02-17 9:02 PM
> To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>
> Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; VINER, JON

<JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

[cid:imageb23443.GIF@edc8812c.40a5c483]

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3D6JybI0Fd9bYlnUwsc3-252FSSBcJsPyif2pFXoHM3Rirsfw-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=bsYt2Us6kVE7C0v7agm60eKFBcYn5flSZgUHheeemZs&e= > | Twitter<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Ftwitter.com-252FBlakesLaw-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3DenyiJgDJoVJOdNB0Rk45uRy0amQRyduyJubu-252B-252Fk87gQ-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=Bu-HhJdDpsag2VP4xGs87Qgrd_AJI2qrQt4RZmu04co&e= > | Unsubscribe<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-252FEnglish-252FResources-252FBulletins-252FPages-252Funsubscribe.aspx-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3D6WT0PKhI84GuqOSyGxmFRE1haJjLELvz6-252BmkYpltRqQ-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=iGioGXs1OfZRyLUJEd0FhiGIefVpY8uX8t4lmU5wkvU&e= >

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

_____

**********

This e-mail message is privileged, confidential and subject to
copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et
soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

**********
_____

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Ontario Power Generation Inc., as the Manager and in its capacity as Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The FSM, as agent of the Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.03 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture.

**1.04 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.

**1.05 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.06 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.07 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.08 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.09 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.10 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.11 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.12 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.13 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.14 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.15 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.16 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.17 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to the Financing Entity, such reference shall

be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**

### 1.18 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become

due and payable[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account 5 Business Days prior to the fifteen day of each calendar month (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages.

**2.02 <u>Gross-up</u>**

All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[3].

[3] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. **[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

---

in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations and termination of the Trust Indenture, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) **[NTD: already covered in process certificate in section 3.01 of the Process Agreement]**

(c) **[NTD: already covered under Process Agreement.]**

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided in OPG's capacity as FSM) and addressed to the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(e) **[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. **[as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]**

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. Subject to Section 5.01(b), the Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. Subject to Section 5.01(b), the Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) the Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province will be a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to

further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv) confirms that the Indenture Trustee shall send notices to the Province in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[4]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a

[4] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

Finance Amount.[5] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

### 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[6]

[5] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

[6] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead be primary obligor under the Obligations Secured. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly. Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution,

delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), this Change of Law Protection Agreement shall not apply in respect of any new Primary Obligation following the date of such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]**

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations

in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this Agreement.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the **[later]** of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of a Termination Notice from the Province by the Indenture Trustee, the FSM and the Financing Entity, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and

(c) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement and all such Persons who are Beneficiaries derive their rights exclusively through the Indenture Trustee and such rights are subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[7] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" has the meaning ascribed thereto in the Process Agreement.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[7] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation or otherwise constitutes a Finance Amount.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and the FSM.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means **[an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture] or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.] [NTD: To be discussed.]**

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

# EXHIBIT B
# ASSUMPTION NOTICE

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

~~**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**~~

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

~~**[NAME OF INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]***~~Ontario Power Generation Inc.*, as the ~~Financing Entity Trustee~~Manager and in its capacity as ~~trustee of the **[FINANCING ENTITY]**~~Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The ~~trustee~~FSM, as agent of the ~~Financing Entity in its capacity as~~ Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

~~OPG~~The FSM and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain

assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, ~~the Financing Entity Trustee,~~ the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same

may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### ~~1.02 Trustee to act in accordance with the Trust Indenture~~

~~Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.~~

### 1.02 ~~1.03~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.03 ~~1.04~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. ~~No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.~~

### 1.04 ~~1.05~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other ~~agreement~~Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.

### 1.05 ~~1.06~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.06 ~~1.07~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.07 ~~1.08~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.08 ~~1.09~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.09 ~~1.10~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

## 1.10 ~~1.11~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

## 1.11 ~~1.12~~ Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

## 1.12 ~~1.13~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

## 1.13 ~~1.14~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

## 1.14 ~~1.15~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## 1.15 ~~1.16~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.16 ~~1.17~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.17 ~~1.18~~ References to Acts of the Financing Entity ~~Trustee~~

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity ~~or the Financing Entity Trustee, as trustee of the Financing Entity,~~ is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to ~~(i)~~ the Financing Entity ~~or (ii) the Financing Entity Trustee~~, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity~~,~~). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**

### 1.18 ~~1.19~~ Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or

so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable~~, without Acceleration~~[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation ~~(without Acceleration)~~ in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, ~~as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation,~~ in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection~~Protection Account 5 Business Days prior to the fifteen day of each calendar month (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a~~

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

## 2.02 Gross-up

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the CollectionProtection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][3]

## 2.03 Absence of Set-off

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

## 2.04 Payment into CollectionProtection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited

[3] Under consideration.

thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid~~5~~3.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

[4] ~~This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.~~

~~5~~3 Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. **[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

### 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

### 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations and termination of the Trust Indenture, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03~~)~~.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements ~~and this Agreement~~, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~,provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained~~.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if ~~(a)~~ the Adherence Conditions applicable thereto have been satisfied~~; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation~~.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;**[NTD: already covered in process certificate in section 3.01 of the Process Agreement]**

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;**[NTD: already covered under Process Agreement.]**

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided in OPG's capacity as FSM) and addressed to the Province and the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; andii. confirmation that confirming that the FSM has delivered to the Province a certificateProcess Certificate in accordance with Section **[3.01]** of the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms**[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

[6] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

### 4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## ~~RIGHTS OF THE~~ PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. ~~(a)~~ to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. ~~(b)~~ **[as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]**

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~The~~Subject to Section 5.01(b), the Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. ~~The~~Subject to Section 5.01(b), the Indenture Trustee shall recognize the Province as being entitled to all

of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) the Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province will be a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv) confirms that the Indenture Trustee shall send notices to the Province in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Voting Rights under "Outstanding Notes"

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[74]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken**

[74] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

**any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

### 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[85] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

### 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

[85] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[96]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead be primary obligor under the Obligations Secured. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly. Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity

[96] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

### ~~7.04 Release of all Collateral~~

~~(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.~~

~~(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.~~

### ~~7.05 Right to Notice and Attend Meetings~~

~~The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.~~

**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by ~~the FSM or~~ the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), ~~the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.~~this Change of Law Protection Agreement shall not apply in respect of any new Primary Obligation following the date of such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]**

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish

the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this Agreement.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the **[later]** of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of a Termination Notice from the Province by the Indenture Trustee, the FSM and the Financing Entity, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and

(c) ~~(b) the date that a Termination Notice is received~~**[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of an Assumption Notice from the Province by the Indenture Trustee, the ~~FSM and~~Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o~~ *~~Ontario Power Generation Inc.~~*

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 ~~Force Majeure~~Intentionally Deleted

~~In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.~~

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement and all such Persons who are Beneficiaries derive their rights exclusively through the Indenture Trustee and such rights are subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

### 9.09 ~~9.08~~ Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN**~~**FAIR HYDRO TRUST, BY ITS** ~~**CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**~~**MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

**CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10]7 in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

~~["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]~~

~~["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]~~[11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" ~~means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager~~ has the meaning ascribed thereto in the Process Agreement.

[10]7 Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] ~~Note: To be confirmed if required.~~

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~"~~**Collection Account**~~" ~~has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "~~I~~investment ~~I~~interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

~~[~~"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.~~]~~

~~[~~"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.~~]~~[12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

[12] ~~Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation~~, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and (b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account~~ or otherwise constitutes a Finance Amount.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and ~~OPG~~the FSM.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture~~ as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Program Breach**" means **[an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture] or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.] [NTD: To be discussed.]**

"**Protection ~~Agreement Maximum"~~ ~~means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that ~~materially and~~ adversely affects (a) the ability of the Financing Entity to receive amounts ~~on~~in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that ~~materially and~~ adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest ~~and~~so that it can pay Obligations Secured, or (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

# EXHIBIT C
# SUSPENSION NOTICE

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager for the Financing Entity in accordance with the Act, is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the FSM provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to the FSM that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations the FSM has agreed to perform and assurances the FSM has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the FSM, and of the Province in accordance with the Act, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the FSM, as agent of the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF THE FSM

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) The FSM shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; or

(B) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) The FSM shall use commercially reasonable efforts:

(i) to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; and

(ii) to, after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of the FSM (or their respective designees, provided that such designees are also executive officers of the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and

coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to the FSM; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to the FSM.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that would be adverse to the Issuer, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast.

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) Not more than [■] Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will be revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of the FSM

The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall use commercially reasonable efforts

to cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of the Financing Entity enforceable against the Financing Entity in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(e) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

**5.02 <u>Representations and Warranties of the Province</u>**

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS[2]

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to the FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to the FSM (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to the FSM, the FSM shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be

[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

The FSM shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, the FSM will use commercially reasonable efforts to cause the Financing Entity to, use commercially reasonably efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any

[3] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured.

[4] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

acceleration of future fees, profits or other like amounts; provided that, this Section 6.05 shall not apply to any Obligations Secured under a Derivative Agreement.[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of the FSM under this Agreement which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach;

(b) any representation or warranty made by the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within sixty (60) days after written notice by the Province to the FSM of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[5] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Intentionally Deleted[6]**

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[6] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., SOLELY AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture)

governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF ELECTION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager for the Financing Entity in accordance with the Act, is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~the FSM provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~the FSM that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~the FSM has agreed to perform and assurances ~~OPG~~the FSM has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~the FSM, and of the Province in accordance with the Act, have been done.

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, except in each case as referenced in the definition of Protection Event;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity ~~or the Financing Entity Trustee~~**

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the FSM, as agent of the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~OPG~~THE FSM

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~or replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]~~

~~[2] Note: The tax documents to be provided to the Province are under consideration.~~

**2.02 Covenants**

(a) ~~OPG~~The FSM shall~~, as the FSM,~~ use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; or

~~(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;~~

~~(C) consolidate or merge with or into any other Person;~~

(B) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or(H) voluntarily dissolve or liquidate~~.

(b) ~~OPG~~The FSM shall use commercially reasonable efforts:

(i) ~~comply, and as the FSM~~to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;, and

~~(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;~~

(ii) ~~(iii)~~ to, after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~*the Change of Law Protection* Agreement would be accelerated~~, delayed or otherwise affected; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or *the Change of Law Protection* Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~OPG~~The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~OPG~~the FSM (or their respective designees, provided that such designees are also executive officers of ~~OPG~~the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation,

and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any* Primary Obligations arising *under or in connection with a Derivative Agreement.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d~~)(ii~~) of the Change of Law Protection Agreement.

### 3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~the FSM; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~c~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~the FSM.

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that would be adverse to the Issuer, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;~~(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the~~ provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are ~~as~~ reasonably contemplated in the Reviewed Documentation, ~~as to the type, scope and extent of the~~* ~~Primary Obligations arising~~ *~~thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to~~including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) ~~(c)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document

complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

~~(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast. ~~In determining~~

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum~~, the Province may have regard to (but not be bound by) the Initial Forecast.~~ from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) ~~Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.~~Not more than [■] Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will be revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~OPG~~the FSM

~~OPG~~The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall use commercially reasonable efforts to cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario~~, is duly qualified to carry on its business in each jurisdiction in which it carries on business,~~ and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto~~ and to own its property and carry on its business as currently conducted.(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto~~.

(c) ~~(d)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM

has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of ~~OPG~~the Financing Entity enforceable against ~~OPG~~the Financing Entity in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) ~~(e)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of ~~OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG~~the Financing Entity or in the ability of the Financing Entity to perform its obligations under ~~this Agreement or any~~the Program Agreements.

(e) ~~(g)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

~~(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.~~

~~(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or~~

any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## 5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

# ARTICLE VI
# ELECTION TO ASSUME APPROVED OBLIGATIONS[2]

## 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPGthe FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPGthe FSM (the "**Proposed Assumption Date**").

## 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPGthe FSM, OPGthe FSM shall provide the following information and documentation to the Province:

[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~ in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

[3] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured.

### 6.04 Cooperation to Implement the Assignment and Assumption

~~OPG~~The FSM shall cooperate with the Province and~~, as FSM,~~ will use commercially reasonable efforts to cause the Financing Entity to cooperate, and ~~each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3][4]

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~the FSM~~,~~ will use commercially reasonable efforts to cause the Financing Entity to, use commercially reasonably efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~.~~[4]; provided that, this Section 6.05 shall not apply to any Obligations Secured under a Derivative Agreement.[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~the FSM under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach;

(b) any representation or warranty made by ~~OPG~~the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured

[3][4] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

[4][5] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

within sixty (60) days after written notice by the Province to the FSM of such misrepresentation; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]

Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 ~~Confidentiality~~[5] Intentionally Deleted[6]**

[5][6] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]**

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., SOLELY AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN~~FAIR HYDRO TRUST, BY ITS ~~CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]~~MANAGER, ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____

Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■]Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~referenced as the Program Agreement Maximum in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation. ~~"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture~~ as of the date of this Agreement ~~or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture ~~as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee~~.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any

other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

~~**(form of Assumption Agreement to be attached, once settled)**~~

**From:** LEE John -TREASURY
**To:** Mike Manning
**Cc:** HAHN PARKER Janet -TREASURY; WONG Leslie -LAWDIV
**Subject:** Fwd: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Wednesday, October 18, 2017 11:48:12 AM
**Attachments:** OFHPA - Province Support - Obligor Approval Process(OPG_Torys_CommentsOc....docx
Blackline_24337136v1 - 24337136v3.pdf

---

Markup sent to Tobias at 10 am
Let me know when you want to discuss next steps and timing

Sent with BlackBerry Work (www.blackberry.com)

---

From: "Mansoori, Nina" <nmansoori@torys.com>
Sent: Oct 18, 2017 9:55 AM
To: "'Whitfield, Tobias P. (MOF)'" <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; "Ramchandani, Rima" <rramchandani@torys.com>; "Feldman, Michael" <mfeldman@torys.com>; "Olusoga, Yinka" <yolusoga@torys.com>; "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>; "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>; "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>; "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>; "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>; "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>; "Devine, James (OFA)" <James.Devine@ofina.on.ca>; "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>; "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>; "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>; "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>; "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>; "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>; "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>; "Kim, John (OFA)" <John.Kim@ofina.on.ca>; "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>; "Hanslep, Malle (MOF)" <Malle.Hanslep@ontario.ca>; "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>; "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>; "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; "Mansoori, Nina" <nmansoori@torys.com>
Subject: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA)

<Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.torys.com-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C93d1efa93b3c4d0bbafb08d5162fc536-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636439317277838216-26sdata-3DRmlcpv8bhJMIfPyhTUOlRa-252BkLTRUoQe1Kl9QtKXKoeo-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=faVQc6owhmqW1Epsm1IgKtKdOr6WxW_KgjwibSrG7Ns&m=mBbj6o8h4ceIk4nsCTFIZ_pp-UVL8qHJIw3evFotTuE&s=TSAGfd9RfneJ0wFdQ4Cii9HQavUdjyOHiZAJBCzvGeg&e= >

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.torys.com-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C93d1efa93b3c4d0bbafb08d5162fc536-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636439317277838216-26sdata-3DXeJO17Ztb-252FtKzX5tyFnw-252BaR0hpcZSWOs0vGUrGru6X8-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=faVQc6owhmqW1Epsm1IgKtKdOr6WxW_KgjwibSrG7Ns&m=mBbj6o8h4ceIk4nsCTFIZ_pp-UVL8qHJIw3evFotTuE&s=eKTqnDsV5NQPQ_U64IuDMs1Cehz2HX9c5R2UQnZElOw&e= >

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Subject to satisfaction of the conditions described under "Adherence Condition" and "Approval Process" below, the Change of Law Protection Agreement will apply (without duplication) to all finance amounts of the applicable financing entity excluding the following (collectively, the "Specified Claims"): (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) **[amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account]**[1], and (c) **[tax liabilities]**[2] and (d) **INTENTIONALLY DELETED**.[3]

Adherence Condition

The Change of Law Protection Agreement will bind the Province in respect of a Specified Claim if OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.[4]

Approval Process

OPG, as financial services manager, agrees that it will not provide the certification under the heading "Adherence Condition" unless the following has been satisfied:

1. at the time the applicable funding obligations are incurred, the maximum aggregate payment amounts due or becoming due under such funding obligations, together with all other outstanding or committed Specified Claims, do not exceed the Program Maximum in effect at that time; and

[1] Why wouldn't this be covered? If the Province is agreeing to make regularly scheduled payments if a Protection Event occurs, deposits into such accounts may be part of the overall payment schedule.

[2] How would the financing entity otherwise pay such tax liabilities? How else to address the point that such amounts would by statute take priority over scheduled payments?

[3] In Toby's October 13 email, we understand this was included so that the quantum of contingent obligations would be factored into the Program Maximum test. However, any contingent liabilities would already be factored into the determination of the Program Maximum so should not be excluded here. For example, if the financing entity has a LC facility, the potential liability under those undrawn LCs would already be included in the Program Maximum.

[4] We would like to avoid involving the investors in the approval process mechanics between the Province and OPG and would rather deal with this process in a separate side letter or memo. The financeability of the transaction turns on investors' ability to simply confirm that the Specified Claims are covered under the Change of Law Protection Agreement without the additional hair of the behind-the-scenes approval process between the Province and OPG.

2. OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than **[ten (10)]** Toronto business days prior to the incurrence of such funding obligations:

   (a) setting out the material terms of the funding obligations pertaining to principal amount, pricing and third party fees; and

   (b) confirming that:

      (i) the funding obligations (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and

      (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation.

In connection with an incurrence or amendment of funding obligations and other related Specified Claims, OPG may certify to interested third parties (including, without limitation, the Indenture Trustee) that such Specified Claims are covered by the Change of Law Protection Agreement provided that the Approval Process has been satisfied in accordance with this document. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by all addressees as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than **[fifteen (15)]** Toronto business days prior to the initial issuance of any funding obligations by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a funding obligation may arise or be affected;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the funding obligations together with any related material information.

If acceptable, the Province will confirm within **[fifteen (15)]** Toronto business days of receipt of such documents that such reviewed documents shall be the "Reviewed Documentation" for the purposes of the Approval Process; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement**.**

Any proposed material changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than **[fifteen (15)]** Toronto business days prior to any proposed use or such documents becoming effective. Such material additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying the Approval Process if the Province confirms the same within **[fifteen (15)]** Toronto business days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.

The term "Substantially in the Form" herein means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), that the covenants of the financing entity are no more onerous in any material respect and there are events of

default that are consistent in all material respects, respectively, with the covenants of the financing entity and events of default contained in the Reviewed Documentation; and

(b) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document complies in all material respects with all securities disclosure requirements relating to the funding obligations subject to distribution thereunder.

Program Maximum

The initial Program Maximum will be determined prior to the initial issuance of the first funding obligation in accordance with this section. The Program Maximum will be based on OPG's forecast of the maximum payment obligations expected to arise under Specified Claims during the next 24 month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than **[thirty (30)]** Toronto business days prior to the proposed incurrence of the first funding obligations. If the Province agrees that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods, then the Province will confirm in writing to OPG and the financing entity within **[thirty (30)]** Toronto business days of receipt of the Forecast that it agrees with the Program Maximum.

The Forecast will be updated and delivered to the Province between nine (9) and twelve (12) months prior to the expiry of the then current Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will confirm that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods. If the Province does not agree with the determination of the Program Maximum, then the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and the Program Maximum will be revised within **[thirty (30)]** Toronto business days of receipt of the Forecast. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Promptly after the issuance of funding obligations by a financing entity (or an amendment thereof), OPG will provide the Province with:

(a) a copy of the then most recent Financing Plan; and

(b) electronic copies of all related closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations (including, for greater certainty, any disclosure documents).

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Condition and the Approval Process.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as financial services manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Specified Claim or exercise any other election or privilege in respect of any Specified Claim, in each case, if as a result the obligations applicable to the Specified Claim under the Change of Law Protection Agreement would be accelerated; and

(c) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province unless that disclosure is substantially in a form previously approved by the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Condition and Approval Process.

## Adherence of the Change of Law Protection Agreement to Approved Obligations

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

~~Approval Process~~

Subject to satisfaction of the conditions described under "Adherence Condition"~~,~~ **and "Approval Process"** below, the Change of Law Protection Agreement will apply (without duplication) ~~in respect of the following "Specified Claims" (as defined in the Term Sheet)~~**to all finance amounts** of the applicable financing entity **excluding the following** (collectively, the "~~Approved Obligations~~**Specified Claims**"):

1. ~~repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");~~

2. ~~obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");~~

3. ~~interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");~~

4. ~~derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");~~

5. ~~other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and~~

[1] ~~This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.~~

[2] ~~Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.~~

6. ~~finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),~~

~~but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including~~ (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) **[amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account][1]**, **and** (c) **[tax liabilities** ~~and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.~~**][2] and (d) INTENTIONALLY DELETED.[3]**

Adherence ~~Conditions~~**Condition**

The Change of Law Protection Agreement will bind the Province in respect of a ~~funding obligation that is an Approved Obligation if:~~**Specified Claim if OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.[4]**

**Approval Process**

**OPG, as financial services manager, agrees that it will not provide the certification under the heading "Adherence Condition" unless the following has been satisfied:**

~~[3] Confirm arrangements with OPG.~~

**[1] Why wouldn't this be covered? If the Province is agreeing to make regularly scheduled payments if a Protection Event occurs, deposits into such accounts may be part of the overall payment schedule.**

**[2] How would the financing entity otherwise pay such tax liabilities? How else to address the point that such amounts would by statute take priority over scheduled payments?**

**[3] In Toby's October 13 email, we understand this was included so that the quantum of contingent obligations would be factored into the Program Maximum test. However, any contingent liabilities would already be factored into the determination of the Program Maximum so should not be excluded here. For example, if the financing entity has a LC facility, the potential liability under those undrawn LCs would already be included in the Program Maximum.**

**[4] We would like to avoid involving the investors in the approval process mechanics between the Province and OPG and would rather deal with this process in a separate side letter or memo. The financeability of the transaction turns on investors' ability to simply confirm that the Specified Claims are covered under the Change of Law Protection Agreement without the additional hair of the behind-the-scenes approval process between the Province and OPG.**

1. at the time the **applicable** funding ~~obligation is~~**obligations are** incurred, the maximum aggregate payment amounts due or becoming due under ~~the~~**such** funding ~~obligation~~**obligations**, together with all other outstanding or committed ~~Approved Obligations~~**Specified Claims**, do not exceed the Program Maximum~~;~~ **in effect at that time; and**

2. OPG**, as financial services manager,** delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than ~~•~~**[ten (10)]** Toronto business days prior to the incurrence ~~or any amendment of the funding obligation, setting out the following with respect to the funding obligation~~**of such funding obligations**:

   (a) ~~the following information respecting a funding obligation to be incurred:~~**setting out the material terms of the funding obligations pertaining to principal amount, pricing and third party fees; and**

   ~~(i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;~~

   ~~(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;~~

   ~~(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;~~

   ~~(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the~~

~~Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;~~

~~(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;~~

~~(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;~~

~~(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;~~

**(b)** ~~(c) a statement~~**confirming** that:

(i) the ~~Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation~~**funding obligations** (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; **and**

~~(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect,~~<~~*in all material respects,* >~~arm's length terms and conditions;~~

**(ii)** ~~(iii)~~ any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation~~; and~~

~~(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation~~.

~~If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.~~ In connection with an incurrence or amendment of ~~a~~ funding ~~obligation~~**obligations and other related Specified Claims**, OPG may certify to interested third parties ~~that Adherence Condition 2[4] with respect thereto~~**(including, without limitation, the Indenture Trustee) that such Specified Claims are covered by the Change of Law Protection Agreement provided that the Approval Process** has been satisfied **in accordance with this document**. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by ~~any addressee~~**all addressees** as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than ~~•~~**[fifteen (15)]** Toronto business days prior to the initial issuance of any funding ~~obligation~~**obligations** by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

~~[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?~~

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a ~~Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation~~**funding obligation** may arise or be affected~~. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;~~ **;**

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the ~~Funding Obligation~~**funding obligations** together with any related material information.

If acceptable, the Province will confirm **within [fifteen (15)] Toronto business days of receipt of such documents** that such reviewed documents shall be the "Reviewed Documentation" for the purposes of ~~Adherence Condition 2(c)~~**the Approval Process; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement.**

Any proposed **material** changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than ~~•~~**[fifteen (15)]** Toronto business days prior to any proposed use or such documents becoming effective. Such ~~modified,~~**material** additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying ~~Adherence Condition 2(c)~~ **the Approval Process** if the Province confirms **the** same ~~not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.~~**within [fifteen (15)] Toronto business days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.**

~~For the purposes of Adherence Condition 2(c), the~~**The** term "Substantially in the Form" **herein** means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), ~~above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue~~

~~(including as a result of any default, acceleration, termination, wind up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation~~**that the covenants of the financing entity are no more onerous in any material respect and there are events of default that are consistent** *in all material respects,* **respectively, with the covenants of the financing entity and events of default contained in the Reviewed Documentation; and**

~~(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and~~

**(b)** ~~(c)~~ with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document ~~and that such proposed disclosure document~~ complies in all material respects with all securities disclosure requirements relating to the ~~Funding Obligation~~**funding obligations** subject to distribution thereunder.

Program Maximum

The **initial** Program Maximum will be determined ~~by the Province~~ prior to the initial issuance of the first funding obligation. ~~In determining the~~ **in accordance with this section. The** Program Maximum~~, the Province~~ will ~~have regard to (but not be bound by)~~**be based on** OPG's forecast of the maximum payment obligations expected to arise under ~~Approved Obligations~~**Specified Claims** during the next ~~[12]~~**24** month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than ~~•~~**[thirty (30)]** Toronto business days prior to the proposed incurrence of the first funding ~~obligation. The Province will confirm the Program Maximum~~**obligations. If the Province agrees that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods, then the Province will confirm** in writing to OPG and the financing entity **within [thirty (30)] Toronto business days of receipt of the Forecast that it agrees with the Program Maximum**.

The Forecast will be updated and delivered to the Province ~~[quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following the date~~**between nine (9) and twelve (12) months prior to the expiry** of ~~such updated~~**the then current** Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will ~~determine whether or not~~**confirm that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the**

**applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods. If the Province does not agree with the determination of the Program Maximum, then the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and** the Program Maximum will be revised **within [thirty (30)] Toronto business days of receipt of the Forecast**. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

~~Prior to~~**Promptly after** the ~~initial~~ issuance of ~~any~~ funding ~~obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.~~

~~Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.~~

~~Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be~~**obligations by a financing entity (or an amendment thereof), OPG will** provide the Province with **:**

**(a) a copy of the then most recent Financing Plan; and**

**(b)** electronic copies of all related ~~governing and all other~~ closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations **(including, for greater certainty, any disclosure documents)**.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence ~~Conditions~~**Condition and the Approval Process**.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as ~~Financial Services Manager~~**financial services manager**) with the OFHPA, the General Regulation and any other enactment related thereto;

~~(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;~~

**(b)** ~~(c)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any ~~Approved Obligation~~**Specified Claim** or exercise any other election or privilege in respect of any ~~Approved Obligation~~**Specified Claim**, in each case**,** if as a result the obligations applicable to the ~~Approved Obligation~~**Specified Claim** under the Change of Law Protection Agreement would be accelerated~~, delayed or otherwise affected;(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent~~; and

**(c)** ~~(e)~~ OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province **unless that disclosure is substantially in a form previously approved by the Province**.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence ~~Conditions~~**Condition and Approval Process**.

Document comparison by Workshare Compare on October-18-17 9:41:10 AM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24337136/1 |
| Description | #24337136v1<TorysAtWork> - OFHPA - Province Support - Obligor Approval Process(OPG/Torys'CommentsOctober/16/17) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24337136/3 |
| Description | #24337136v3<TorysAtWork> - OFHPA - Province Support - Obligor Approval Process(OPG/Torys'CommentsOctober/16/17) |
| Rendering set | strikeout-colour |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| <~~*Moved from* >~~ | |
| >*Moved to* < | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 84 |
| Deletions | 103 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |

| | |
|---|---|
| Total changes | 189 |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Ronald Kwan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Usman Zahid; Gadi Mayman |
| **Subject:** | Fwd: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation |
| **Date:** | Monday, October 16, 2017 8:04:25 AM |
| **Attachments:** | REG-11654_ID51067_LRC_CBN-DRAFT-V7.docx<br>ATT00001.htm |

---

Good morning,

Attached, for your review and comment, is the Cabinet note for the OFHP Fee Regs tracking direct to Cabinet on Wednesday. We've been asked to provide comments by 4pm today.

Malle, Toby, I'm sharing with you as well in case this hasn't made its way to you.

Thank you, Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 16, 2017 at 7:56:52 AM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Birks, Ryan (MOF)" <Ryan.Birks@ontario.ca>
> **Subject: FW: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation**
>
> Hi all,
> Could you please have your teams review and provided comments to me **no later than 4:00pm**?
> Thanks,
> Dave
>
> ---
>
> **From:** Wittman, Nancy (CAB)
> **Sent:** October 16, 2017 7:56 AM
> **To:** McLean, David (MOF)
> **Subject:** Fact Check: Draft LRC CBN Fair Hydro Plan Implementation
> Hi
> ENERGY is tracking Direct to Cabinet on Oct 18 (TBC) with proposed regulatory amendments to support Ontario Fair Hydro Plan implementation.
> Can you please have the team review the attached draft LRC CBN for fact check by end of day.
> The CBN is based on draft ministry materials and is being sent to ENERGY for review concurrently.
> As such, there are questions and placeholders for ENERGY to address throughout the note.
> My usual apologies for the short turn around - which seems completely meaningless given that it is for every single note...
> Thx. Nancy

**CABINET BRIEFING NOTE**
**AND LRC RECOMMENDATION**

Energy
**Fair Hydro Plan Implementation**

**DRAFT**

**Based on draft materials**

| | | | | |
|---|---|---|---|---|
| Cabinet (info)<br>Feb 15, 2017 | TB/MBC and Cabinet<br>March 1, 2017 | Announcement<br>March 2, 2017 | TB/MBC<br>May 9, 2017 | Cabinet<br>May 10, 2017 |
| Introduction<br>May 11, 2017 | Royal Assent<br>June 1, 2017 | TB/MBC<br>June 27, 2017 | Cabinet (DTC)<br>June 14, 2017 | Cabinet (DTC)<br>June 27, 2017 |
| Program Effective Date<br>July 1, 2017 | TB/MBC<br>September 25, 2017 | Cabinet<br>September 27, 2017 | Cabinet (DTC)<br>October 18, 2017 (TBC) | |

## Summary of Proposal

The proposed regulations are consistent with Cabinet direction.

**Context for Decision:**

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). One component of the OFHP is refinancing a portion of the Global Adjustment (GA). The implementing legislation for GA refinancing, the *Ontario Fair Hydro Plan Act, 2017* (OFHPA), was introduced May 11, 2017 and received Royal Assent on June 1, 2017. The OFHP expands the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) and puts in place mechanisms including appropriate payment settlement and cost-recovery authorities for and through the IESO to manage the deferred GA costs.

On June 14, 2017 new regulations were created under the OFHPA that support calculations related to GA refinancing and one regulation was amended to authorize IESO to borrow to fund the regulatory asset as part of the financing structure. On June 27, 2017 a new regulation was created under the OFHPA that details the roles and responsibilities of the Financial Services Manager (i.e., OPG), IESO and OEB.

**Commented [MK(1]:** Is this the reg that is being amended?

**Proposal:**
This proposal is the next step in the implementation of GA refinancing. The Ministry of Energy (ENERGY) is proposing amendments to O.Reg. 206/17 (i.e., general regulation) under the OFHPA that would:

1. Enable OPG, as Financial Services Manager (FSM) to establish and charge fees, once approved by the OEB, for the services it provides as part of the government's approach to GA refinancing.

2. Enable OPG, as FSM to recover "carrying costs" (i.e., fees and interest amounts) from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021.

**Why does Ontario need these changes? Why now?**

Addressing rising electricity prices is among the highest priorities for Ontarians. The OEB adjusted rates to reflect the OFHP reductions partially on May 1, 2017 and fully on July 1, 2017. The IESO has been managing the GA deferral with its existing resources since reductions have been in place. As such, it is important for the proposed amendments to take effect in a timely manner to enable OPG to go to market to fund the GA deferral by transferring the regulatory asset to the OPG financing entity. ENERGY understands that OPG intends to go to market in November 2017 and is currently in preliminary discussions with rating agencies with respect to timing and other aspects of its FSM role.

**How will this proposal impact Ontario?**

Under the OFHPA, which enables GA refinancing, electricity bills for a typical residential consumer have been reduced by 25 percent effective July 1, 2017, compared to what they would have been without the initiatives included in the OFHP. The OFHPA also provides that further increases to electricity bills for a typical consumer are to be held to the rate of inflation.

The proposed amendments would support the implementation of the OFHP, which affects all specified consumers to whom the "Fair Adjustment" applies. Prescribed consumers include residential consumers, farms, small businesses, condominiums, long-term care homes and co-operative housing. These are primarily consumers eligible for the Regulated Price Plan (RPP), and aligns with the eligibility under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA). ENERGY notes that up to 500,000 small businesses and farms are benefitting from GA refinancing.

**What is the expected cost to government?**

The GA refinancing structure was designed to result in: (1) increase in provincial gross debt (to finance the equity injection in OPG) offset by an equivalent in regulatory assets resulting in no change in net debt, and (2) an increase in interest on debt paid by the province offset by higher earnings from OPG resulting in no impact on annual deficit of the province. The proposed regulations would support the implementation of this refinancing structure. According to ENERGY, the proposed amendments would not involve a direct fiscal impact on the finances of the province.

**Commented [TR(2]:** Is TB/MBC approval required?

**Commented [TR(3]:** Are the proposed amendments expected to have any ratepayer impacts, for example through FSM fees? Can estimated impacts be provided?

**Commented [TR(4]:** Can estimated fees range that the FSM could charge be provided?

DRAFT

Allowing OPG to recover carrying costs from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021 is expected to have no net impact to specified consumers within this period. As with other costs under the scheme, these costs would be deferred to future collection from specified consumers on and after May 1, 2021.

**What are the key steps to deliver this proposal?**

The proposed regulations would take effect [NTD: placeholder for timelines].

Commented [TR(5]: Is ENERGY requesting an exemption from the Twice Annual Effective Date?

Amendments would provide further detail on the roles and responsibilities of the OPG, IESO and OEB with respect to GA refinancing. Key steps for the delivery of this proposal include:

- OPG to produce Financing Plans that set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA).
- IESO to record deferral amounts in relation to the establishment of the regulatory asset.
- OPG to begin purchasing monthly regulatory assets from the IESO November 2017 and work with lenders and credit rating agencies in establishing vehicles for securitizing (selling) of investment asset interests.
- OPG management fees and interest costs to be recovered from IESO July 1, 2017 to April 30, 2021.
- OPG management fees and interest costs to be recovered by specified consumers through Clean Energy Adjustments (CEAs) on and after May 1, 2021.
- OEB to review OPG management fees as per the methodology established in regulation and determine the rates that will be applied to specific consumers beginning in 2018/2019.

Commented [TR(6]: Please confirm

**How will the changes be communicated?**

Commented [TR(7]: CO Comms to review

[NTD: CO Comms to provide]

## Notes and Recommendation from LRC

N/A – item proceeding direct to Cabinet.

## Cabinet Office Analysis

The Ministry of Energy's (ENERGY) proposed amendments to O.Reg. 206/17 are consistent with Cabinet direction provided for the implementation of GA refinancing as part of Ontario's Fair Hydro Plan (OFHP) on March 1, 2017. The *Fair Hydro Act, 2017* (OFHPA) establishes the framework to refinance a portion of current Global Adjustment (GA) costs as part of the OFHP. The OFHP reduced a typical residential consumer's electricity bills by 25 percent effective July 1, 2017, compared to what they would have

been without the initiatives under the Plan. The refinancing methodology defers a portion of current GA costs to future ratepayers in order to allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

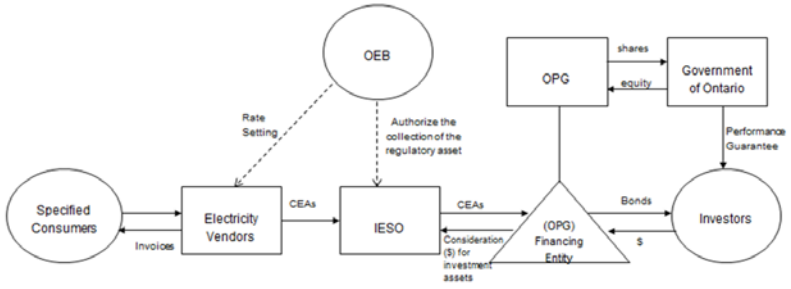
**Refinancing Structure**

Under the GA refinancing structure, the Independent Electricity System Operator (IESO) records the GA cost recovery deferral as a "regulatory asset" (regulated by the Ontario Energy Board (OEB)) to be collected at a future time from "specified consumers" ("the Fair Adjustment" and "IESO deferral"). As a result, specified consumers will receive a reduction in electricity rates from July 1, 2017 to June 30, 2018. IESO may then sell the regulatory asset, at which time it becomes an "investment asset."

The Minister of Energy, following the principles in the Act and regulations, will regularly calculate the "Fair Allocation Amount" to ensure a proper alignment of the allocation of the intergenerational costs and benefits in relation to each of the next 60 six month "reference periods." Based on the Fair Allocation Amount, the Financial Services Manager (OPG), through financing entities, will debt finance a portion of the GA costs. The financings will be backed primarily by the clean energy adjustments payable by specified consumers. The clean energy adjustments will track the actual payment obligations incurred by the financing entities when they become due and payable.

OPG, in its role as the Financial Services Manager (FSM), will calculate the aggregate clean energy adjustment payable in each month of the reference period, and, to ensure intergenerational fairness, these amounts will be managed to ensure consistency with the fair allocation amounts. OEB will calculate the rates at which the clean energy adjustment will be collected from specified consumers.

To recoup the costs associated with the fair adjustment, consumers will be invoiced the clean energy adjustment on their electricity bills through existing IESO and Local Distribution Companies' (LDC) processes, which will be channeled through to pay each financing entity's related funding obligations. The clean energy adjustments will appear on customer's bills once repayment of the accumulated debt begins.



**Note:** CEAs are “clean energy adjustments”.

**Proposal**

In its capacity as FSM under the GA refinancing structure, OPG will take on the risk and responsibility of financing the deferral by purchasing monthly regulatory assets from IESO. OPG will finance these purchases through a combination of an equity investment by the Province and external private sector financing. The proposed regulatory amendments would enable OPG to go to market to fund the GA deferral:

Management Fees: As FSM, OPG is allowed to charge a management fee for its services made up of a base fee, variable fee and Third-party costs (e.g. banking fees). The proposed amendments to O.Reg. 206/17 would establish a methodology for calculating and reviewing FSM management fees. OPG’s base fee for 2017/18 would be established at 7.5 basis points. The OEB would be responsible for determining FSM management fees for future years by reviewing fees for comparable services.

Carrying Costs: OPG must recover management fees and interest costs (i.e., “Carrying Costs”) beginning July 1, 2017 to ensure the implementation of GA refinancing satisfies accounting requirements. These costs however, cannot be recovered from specified consumers during the “inflationary cap period” from July 1, 2017 to April 30, 2021 in order for GA refinancing to proceed as planned under the OFHPA without incurring significantly increased costs. The proposed amendments to O.Reg. 206/17 would enable the recovery of these costs by OPG from the IESO during this period. These costs would form part of the variance account for future collection from specified consumers and would be recovered through the CEAs on and after May 1, 2021.

**Stakeholder response:**

ENERGY consulted with representatives from the OEB, IESO an OPG, as well as external advisors (i.e., lawyers and accountants) and other ministries as appropriate on the proposed regulatory amendments. Consistent with the approach taken to develop and implement the OFHPA, a steering committee chaired by ENERGY’s Deputy Minister met bi-weekly on the status of the proposed regulatory amendments. The committee consists of senior executives from ENERGY, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, Ontario Financing Authority, OPCD, OPG, OEB and IESO.

General public (Neutral) – Generally supports the GA refinancing initiative, but also question the longer term implications. Some individuals and organizations perceive the GA smoothing as unduly burdening future generations.

OPG-

OEB-

IESO-

**Commented [TR(8]:** Please confirm and provide rationale for this fee structure

**Commented [TR(9]:** Would the OEB also have a role in determining fees beyond the base fee? Would fees be determined through the OEB’s hearing process?

**Commented [TR(10]:** Please confirm

**Commented [TR(11]:** Please confirm

**Commented [TR(12]:** Please confirm total expected amount for costs during this period, $500k-1M?

**Commented [TR(13]:** What is OPG’s view on the proposed amendments?

**Commented [TR(14]:** What is the OEB’s view on the proposed amendments?

**Commented [TR(15]:** What is the IESO’s view on the proposed amendments?

**Risks:**

OPG/SPV Mechanism

There are several risks associated with the OPG/SPV mechanism that remain. OPG/SPV could continue to be criticised for not having an appropriate level of accountability to the government or the public, due to the limited amount of government control of the entity, and future rate increases. However, this is seen by the markets as an essential component for the structure to operate and the government remains the sole shareholder of OPG.

Proposed regulations build on a complex financing structure that is unique to Canada—uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise has been required to get to this point. Financing is still not certain.

Legal

In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

**Linkages:**
Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in October / November 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP is intended to balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity Consumers Act, 2016*, (ORECA) put in place a rebate for an amount equivalent to the 8% provincial portion of the HST for eligible residential, small business customers and farms, beginning January 1, 2017.

Rural and Remote Rate Protection (RRRP) and Delivery Rate Protection (DRP) – RRRP and DRP help to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province. DRP was

**Commented [TR(16]:** Are there any risks associated with the proposed management fees, for example rate impact or perception?

**Commented [TR(17]:** Are there any accounting risks associated with the proposed amendments?

**Commented [TR(18]:** Are the amendments expected to have an impact on the financeability/saleability of the investment asset?

**Commented [TR(19]:** Do the proposed amendments introduce any new risks with respect to the OPG/SPV mechanism?

**Commented [TR(20]:** Does the role of the OEB in overseeing OPG fees take into account the risk that OPG could make the case to be exempted from compensation rules because there is no national comparator for this aspect of their work?

DRAFT

established under the FHA and regulations approved June 14, 2017. Both the expanded RRRP and DRP were implemented July 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users, which was earlier than previously estimated. For all other consumers the DRC will be removed by April 2018, also earlier than previously estimated.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. As part of OFHP, ICI eligibility has been expanded several times, and was most recently expanded to allow for the participation of the manufacturing and, e.g., greenhouse sectors with an average month peak demand greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI provides a benefit to all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to $2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

**Other Jurisdictions:**
According to ENERGY, no other jurisdictions have comparable legislative and regulatory frameworks. The U.S. does have examples of securitizations involving single distribution companies, but none of the transactions would have approached the level of complexity involved with the present OFHPA initiative.

**Terms you need to know**

- **Global Adjustment (GA) –** The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and

demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

- **Local Distribution Companies (LDCs) –** Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.) LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive OEB approval to charge a distribution rate.
- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Ontario Power Generation (OPG) –** A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Independent Electricity System Operator (IESO) –** An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.

DRAFT

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Cc:** | Anna Strathy |
| **Subject:** | Fwd: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 9:27:52 AM |

---

I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>
> **Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**
>
> Good Morning Malle,
> In terms of Program Agreements, here is an update:
> -we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
> -we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it

with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the

Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject

of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA)

<Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]

**Sent:** September 25, 2017 12:21 PM

**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima

**Sent:** September-19-17 9:55 PM

**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY

<ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>

**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce

courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Sarah Harris
**To:** Mike Manning
**Cc:** Opal Kandelas
**Subject:** Fwd: Fair Hydro -- Supplemental Indenture for Long Term Debt
**Date:** Friday, October 27, 2017 1:01:34 PM

---

Hi Mike,

Per Malle's e-mail below, would you have any objection if I attend this meeting?

Thanks,
Sarah

Sent from my iPhone

Begin forwarded message:

> **From:** "Hanslep, Malle (MOF)" <Malle.Hanslep@ontario.ca>
> **Date:** October 27, 2017 at 12:49:32 PM EDT
> **To:** "Harris, Sarah (OFA)" <Sarah.Harris@ofina.on.ca>
> **Cc:** "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>
> **Subject: RE: Fair Hydro -- Supplemental Indenture for Long Term Debt**
>
> There is a meeting from 2 to 5 this afternoon in the executive boardroom on this project which is to cover quite a few questions about the structure. I think that if documentation is going to be involved in this project it would be useful for someone to attend. Perhaps you should check with Mike?
>
> ---
>
> **From:** Hanslep, Malle (MOF)
> **Sent:** October 26, 2017 6:48 PM
> **To:** Harris, Sarah (OFA)
> **Subject:** Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
> ---
>
> **From:** Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
> **Sent:** Thursday, October 26, 2017 18:47
> **To:** Kandeepan, Ken (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Yep, Carlos (OFA); Kwan, Ronald (OFA); Devine, James (OFA); Kim, John (OFA); Strathy, Anna (OFA); Katona, Keley (MOF); John Psinas; Nelms, Scott (MOF); Montgomery, Kaitlin (MOF); Veinot, Cindy (TBS); Donaldson, Mark (TBS)
> **Cc:** Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG)
> **Subject:** Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt
> I might not have covered everyone with this email
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
> ---
>
> **From:** Saulnier, Brett <bsaulnier@torys.com>
> **Sent:** Thursday, October 26, 2017 18:36
> **To:** Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
> **Cc:** 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka

**Subject:** Fair Hydro -- Supplemental Indenture for Long Term Debt

All,

Please find attached a first draft of the supplemental indenture for the long term debt, which we just received from Osler. Osler has advised that this draft remains subject to review and comment by the dealers. Please note that Torys/OPG have not yet reviewed.

Thanks,

Brett

Brett Saulnier
P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Gadi Mayman |
| **Subject:** | Fwd: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 5:24:27 PM |
| **Attachments:** | QA_AG Report OFHP_Technical Briefing (OFA).docx<br>ATT00001.htm |

---

You'll see that we replaced the OEFC wording on page four with a comparison to Hydro One borrowing in the capital markets.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Date:** October 13, 2017 at 5:04:42 PM EDT
> **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>
> **Subject: RE: KMs and Q&As**
>
> Hi Martin,
> Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.
> Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.
> Anna
>
> ---
>
> **From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
> **Sent:** Friday, October 13, 2017 3:23 PM
> **To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
> **Subject:** RE: KMs and Q&As
> Hi Folks,
> Attached is a first draft of the technical deck for review and input.
> Sorry for the short turnaround but we will need this for the weekend.
> Any status update on the QAs?
> Thanks,
> Martin
>
> ---
>
> **From:** Ue, Allison (TBS)

**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As
Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial ~~and accounting~~ framework that is appropriate for the intended purpose and the accounting is in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Commented [RK1]:** Is this a more appropriate way to phrase this – OPCD should review.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred electricity system costs should be borne within the electricity system~~by the rate-base~~ and not by the tax-base.

Based on this policy decision, that ratepayers in the future, as beneficiaries of the electricity system assets being paid for, would pay the deferred electricity system costs over a longer period to reflect the expected life of the assets, ~~it was decided that~~ the ability to recover those costs in the future~~debt obligation~~ would be recognized as a regulatory asset, which ~~that~~ ~~w~~could~~would~~ be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (~~i~~.e.g., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be ~~note~~noted that the FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total estimated cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2017 period; and
- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% down to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial ~~and accounting~~ framework that is appropriate for the intended purpose and the accounting is in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Commented [RK2]:** March?

**Commented [AS3]:** Do we want to be so precise in these estimates? Or use the language from the government response "from almost $28 billion to less than $20 billion"

**Commented [AS4]:** ?

**Commented [RK5]:** Is this a more appropriate way to phrase this – OPCD should review.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages ~~an~~ $18 billion in segregated nuclear funds to manage nuclear liabilities.~~fund~~ and. ~~a~~is an electricity sector ~~as an~~ entity regulated by the Ontario Energy Board (OEB)~~,~~ ~~OPG also has~~with extensive experience with regulatory deferral and variance accounts.

**Commented [RK6]:** 20?

**Commented [KK7]:** The asset position of the fund as of the last financial statements 31, Dec 2016 showed assets of close to $20 billion while the current valuation is over $20B

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties ~~...~~(…) Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

~~Base~~Based on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

~~Response prepared by MOF/ OFA as Part of the Minister's Speaking Points~~

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province. Why not have the Province borrow for the OFHP?**

The policy objective of OFHP is to ~~smooth~~more fairly allocate the cost to ratepayers over the useful life, not the contractual ~~life~~term, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base. ~~The Province has not calculated a differential between the Province and the Financing Entity's borrowing costs, because of this policy decision.~~

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected~~resulting~~ in ~~higher~~different interest costs. Having the rate-base pay is not a new policy, for example Hydro One has borrowed in the capital markets since the early 2000s.

The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report, ~~and a similar figure was never~~ot ~~calculated by the Province.~~ and ~~However,~~ it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's 2016 annual report, which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 201~~3~~5) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is, however, silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the ~~only~~ accounting framework in North America that provides the most developed guidance on rate regulated operations.

**Commented [RK8]:** Seems more consistent to the final Q&A below to add this.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the ~~decision making~~policy and implementation process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan a~~n accounting/ finance~~ structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy~~,~~;
- Ministry of Finance~~,~~;
- Treasury Board Secretariat~~,~~;
- Office of the Provincial Controller~~,~~;
- Cabinet Office~~,~~;
- Ontario Financi~~al~~ng Authority (OFA)~~,~~;~~);~~
- Independent Electricity System Operator (IESO)~~;~~, and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

**Commented [RK9]:** Note to Draft: This is a component of TBS, of course.

Response prepared by TBS as Part of the Minister's Speaking Points

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | Fwd: KMs and Q&As |
| **Date:** | Saturday, October 14, 2017 9:56:28 AM |
| **Attachments:** | OFHP - Media Briefing-201710 v5_Clean_715.pptx<br>ATT00001.htm |

---

FYI deck for technical briefing attached, with input from IESO pending.

Q&As coming later today.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 13, 2017 at 8:00:41 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: RE: KMs and Q&As**
>
> Hi everyone,
> Attached is an updated deck based on a discussion with our MO this afternoon. This version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
> We've sent IESO the slide for feedback and input. The text that is currently on IESO's slide was from TBS. We will share a new version once we receive that input.
> The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS.
> For Monday morning's meeting we will use the technical deck and QAs.
> Thanks,
> Martin
>
> ---
>
> **From:** Schlaepfer, Martin (ENERGY)
> **Sent:** October 13, 2017 6:30 PM
> **To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
> **Subject:** Re: KMs and Q&As
> Yes, we will share back the consolidated version once we have incorporated everything.
> Thanks.

Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,
Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.
Thanks
Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As

Thanks, Anna.
Allison how are we doing on TBS input?
Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Martin,
Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.
Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.
Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Attached is a first draft of the technical deck for review and input.
Sorry for the short turnaround but we will need this for the weekend.

Any status update on the QAs?
Thanks,
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As
Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS)

<Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As
Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As
Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

Ontario

# Ontario's Fair Hydro Plan – Status Update

**WORKING DRAFT**

Technical Briefing

October 2017

# Ontario's Electricity System

- Ontario's electricity system is a $20 billion annual sector that serves the needs of nearly 5 million homes, businesses, farms and industries.

- The costs of generating and transmitting electricity around the province are transparently recovered from consumers (i.e., ratepayers). As these costs are recovered directly from consumers, the electricity system is kept separate from the Province's fiscal plan.

- The Ontario Energy Board (OEB) is the independent regulator of Ontario's energy sector. It establishes rates and prices that are reasonable to consumers and allow utilities and generators to invest in the system.

- The Independent Electricity System Operator (IESO) is a not-for-profit entity that manages the province's power system to ensure Ontarians receive power when and where they need it, as well as contracts with non-regulated generators. The IESO also plans and prepares for future electricity needs, and works with its partners to guide conservation-related efforts.

# Ontario's Fair Hydro Plan

- OFHP is delivering rate relief to approximately 5 million residential, small business and farm consumers.

- Ontario's Fair Hydro Plan (OFHP) is comprised of a series of initiatives, some of which will be borne by taxpayers where appropriate, such as sales tax relief and shifting electricity social programs to the tax-base, and some will be borne by ratepayers, such as spreading the generation investment costs and benefits across ratepayers more fairly.

- The government, the Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), the Ontario Energy Board (OEB), key stakeholders and legal, financial and energy sector third-party experts continue to implement OFHP.

- Since the March 2, 2017 OFHP announcement, a number of key milestones have been reached in the implementation of OFHP, including:
  - January 1, 2017: 8% rebate came into effect;
  - May 1, 2017: Partial Global Adjustment (GA) refinancing incorporated into the OEB's Regulated Price Plan (RPP) report;
  - June 1, 2017: The *Fair Hydro Act, 2017* (FHA) received Royal Assent;
  - June 15, 2017: Regulations to enable new and enhanced electricity social programs and shift associated program cost from the rate-base to tax-base came into effect; and
  - July 1, 2017: 25 per cent reduction of electricity bill came into effect on July 1, 2017, including the 8% rebate.

- OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

# Funding Electricity Social Programs and 8% Rebate From Provincial Revenues

- The government made the decision to introduce an 8% rebate program and new and enhanced electricity social programs that provide relief to specific residential consumer groups. At the same time it was decided that the 8% rebate and the social programs would be more appropriately funded from the tax-base, not the rate-base.

- The new and enhanced existing electricity social programs include:
  - Enhanced Rural or Remote Rate Protection through the creation of new Distribution Rate Protection;
  - Expanded Ontario Electricity Support Program;
  - New First Nations On-Reserve Delivery Credit; and
  - New Affordability Fund.

- Local Distribution Companies have implemented these measures and benefits are flowing to customers.

| **Fiscal Cost to the Province ($M)** | **16-17** | **17-18** | **18-19** | **19-20** | **20-21** |
|---|---|---|---|---|---|
| RRRP Enhancements | - | 459 | 472 | 484 | 497 |
| Ontario Electricity Support Program | - | 186 | 261 | 325 | 375 |
| On-Reserve First Nation Delivery Credit | - | 20 | 20 | 20 | 20 |
| Affordability Fund | 200 | - | - | - | - |
| Ontario Rebate for Electricity Consumers (i.e., 8% Rebate) | 883 | 860 | 861 | 871 | 915 |
| **Total Fiscal Cost to the Province** | 1,083 | 1,525 | 1,614 | 1,700 | 1,807 |

Note: Program costs are subject to change based on variables that affect consumption levels, such as weather.

# Global Adjustment (GA) Refinancing Through the Rate-Base

- Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

- The majority of the province's electricity generators are under 20-year contracts. Analysis conducted by Navigant Consulting confirms that many of these generators will be able to operate beyond their contract lives.

- Refinancing the GA, which pays for the bulk of the recent investments in the electricity system, provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built.

- Electricity consumers will benefit from the ongoing useful life of these generating assets, and will be responsible for the costs of these assets over the same timeframe.

- The decisions made to implement GA refinancing most effectively achieve the goals of the refinancing program and ensure that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

- In developing GA refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts (i.e., Navigant, KPMG, E&Y and Deloitte) to provide advice and ensure due diligence was completed.

# GA Refinancing – Update

- Since the March announcement, the total cost of refinancing the Global Adjustment (GA) has been revised downwards substantially:
  - The Ministry of Energy's estimates of peak debt decreased between March 1, 2017 and August 31, 2017 from approximately $28 billion to $20 billion and the estimates of total interest cost decreased from approximately $25 billion to $18 billion.

- The revised debt and interest estimates are the result of the following factors:
  - The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
  - The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2018 period; and
  - Based on Navigant's analysis, the interest rate assumptions for OFHP were updated (i.e., from 5% to 4.5%).

- It should be noted that a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions.

# GA Refinancing – Role of Ontario Power Generation

- With respect to delivery, OPG has been identified as the Financial Services Manager (FSM) to develop the financing plans and act as the financing entity (i.e., Fair Hydro Plan Trust) responsible for managing the debt obligations associated with GA refinancing.
  - OPG has the necessary financing and commercial expertise to assist with refinancing the GA and will ensure that it is done in the most efficient and cost-effective manner.
  - OPG is currently in preliminary discussions with rating agencies and plans to be in the market in November 2017.

- OPG currently manages approximately $20 billion nuclear funds and as an entity regulated by the Ontario Energy Board (OEB), OPG also has extensive experience with regulatory deferral and variance accounts.

- OPG has also developed solid investor relationships and has a large investor base in the structured finance space who would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, the Lower Mattagami project financing attracted a broad investor base of about 80 institutional investors, including major investors in the Canadian power and utility bonds market.

- The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the 2017 Long-Term Energy Plan, which will be released on October 26, 2017.

# GA Refinancing – Role of Role of the Independent Electricity Operator (IESO)

- IESO will recognize impact of deferring certain costs that will be recovered in the future from ratepayers as a rate-regulated asset; periodically that asset, or the right to recover those costs from future ratepayers, will be sold to OPG and financed through borrowing by OPG.

- IESO will reflect the impact of the GA refinancing using rate-regulated accounting similar to other regulated entities in Ontario, including Ontario Power Generation and Hydro One:
  - Rate-regulated accounting reflects the economic substance of the government's policy decision to recover the costs of the GA refinancing fully from the ratepayers;
  - Rate-regulated accounting is well understood in the electricity sector; and
  - Six other IESO like entities in other North American jurisdictions recognize the economic effects of rate-regulated accounting (i.e., in AESO, ISO, NYISO, MISO, PJM and ERCOT)

**[NTD: Slide shared with IESO for input]**

# GA Refinancing – Accounting Considerations

- The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan in 2017-18 and in future years.

- PSAS is silent on the use of regulated accounting:
  - PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
  - US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference in this scenario.

- In the development of GA refinancing, the government consulted with several third party advisors (e.g., KPMG, E&Y, Deloitte) in the application of accounting standards. This is normal course of business governments take for complex transactions.

# Questions?

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Ken Kandeepan; Mike Manning |
| **Subject:** | Fwd: MO fact check |
| **Date:** | Tuesday, October 17, 2017 10:59:09 AM |

Hi Anna,

FYI. Energy asked us to review a Q&A, which we reviewed and revised somewhat as below. It was a short turn-around requested by Hilary, but perhaps we could send additional edits.

Ron

Begin forwarded message:

> **From:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Date:** October 17, 2017 at 10:52:08 AM EDT
> **To:** "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject: Fwd: MO fact check**
>
> Hi,
>
> How about this?
>
> Ron
>
> **Q and A – Electricity Sector Debt**
>
> **Q. Has electricity sector debt always been a ratepayer obligation?**
>
> The debt associated with the former Ontario Hydro is managed by its legal continuation, the Ontario Electricity Financial Corporation (“OEFC”), which is an agency of the Ministry of Finance. The OEFC is not an Ontario Energy Board regulated entity. OEFC is consolidated into the Province’s Public Accounts, including its debt and other liabilities, assets, as well as its revenues and expenses, including the debt retirement charge (DRC) and interest expenses. Prior to its restructuring, the debt of the former Ontario Hydro was also fully guaranteed by the Province.
>
> While the former Ontario Hydro, as a rate-regulated entity, was able to service and pay down its debt and other liabilities from the

electricity sector, on April 1, 1999, the former Ontario Hydro was restructured. As of that date, the Ministry of Finance determined that the estimated value of the assets of the former Ontario Hydro in a commercial and competitive electricity sector, was $17.2 billion, which was exceeded by total debt and other liabilities of $38.1 billion. The resulting shortfall of $20.9 billion was determined by the Ministry of Finance to be “stranded debt.”

To allow OEFC to service and retire $38.1 billion in total debt including the $20.9 billion in stranded debt, the Province established a long-term plan where debt service and repayment would be through dedicated revenues from the electricity-sector. This would be broken down for the electricity sector as follows:

- Notes receivable from the Province, OPG, Hydro One and IESO;
- Payments in lieu of taxes (PILs), which are equivalent to the corporate taxes and property taxes paid by private sector corporations, paid by OPG and municipal electricity utilities (**note**: subsequent to the Hydro One IPO, Hydro One no longer pays PIL of corporate income tax to OEFC. Provincial corporate taxes payable by Hydro One Inc. are due and payable by the Province to OEFC);
- DRC paid by electricity consumers; and
- The cumulative combined profits of OPG and Hydro One in excess of the government’s annual interest cost (initially $520 million annually) of its investments in the two companies.

As of April 1, 1999, the present value of the PILs and the cumulative combined profits of OPG and Hydro One in excess of the government’s $520 million annual interest cost of its investments in the two companies was estimated at $13.1 billion. As a result, subtracting the $13.1 billion from the stranded debt of $20.9 billion resulted in an initial estimate of $7.8 billion, for the residual stranded debt. As the amounts of PILs and profits is subject to actual results and uncertainty of future financial performance of the companies and future tax rates, the Electricity Act provided for the residual stranded debt to be determined from time to time.

Legislation provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.

The DRC has since been ended for residential users as of January 1, 2016, and the government has amended the Electricity Act to provide certainty to all other electricity users to end the DRC as of April 1, 2018.

**From:** "Cox, Hilary (ENERGY)" <Hilary.Cox@ontario.ca>
**Date:** October 17, 2017 at 9:48:32 AM EDT
**To:** "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
**Subject: FW: MO fact check**

Hi Ron –
Our MO has asked for a QA on whether electricity debt has always resided in the electricity system or if it's ever been within the tax base. Staff have prepared the attached to respond to that request. Please review/fact check and send back to me ASAP for use today.
Hilary

**Hilary Cox**
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy
T: 416.327.7204 | Bb: 647.237.8140 |
E: Hilary.cox@ontario.ca

**From:** Anna Strathy
**To:** Ken Kandeepan; Mike Manning
**Subject:** Fwd: OFHP Fees Regulation Meeting
**Date:** Monday, October 02, 2017 3:29:34 PM

---

FYI

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Date:** October 2, 2017 at 3:24:39 PM EDT
> **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>
> **Cc:** "Francesca Bungaro-Yemec (ENERGY)" <Francesca.Bungaro-Yemec@ontario.ca>, Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>
> **Subject: Re: OFHP Fees Regulation Meeting**
>
> Thanks Martin. Please include Ken Kandeepan and Mike Manning from the OFA.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Oct 2, 2017, at 3:10 PM, Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca> wrote:
>
> > Hi Anna,
> > We're looking to set up a meeting tomorrow with OPG, OFA and the OEB to discuss the OFHP Fees Regulation that is currently being drafted. This would be an internal meeting only with no political staff.
> > Francesca will be in touch with your office to find a mutually convenient time.
> > Let me know if you have any questions or concerns.
> > Thanks,
> > Martin
> > **Martin Schlaepfer**
> > Director of Operations
> > Deputy Minister's Office

Ministry of Energy
T: 416-326-7688
E: martin.schlaepfer@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Ken Kandeepan; Ronald Kwan; Mike Manning; Keley Katona (ENERGY) |
| **Cc:** | Gadi Mayman; Anthony Reiss (MGS) |
| **Subject:** | Fwd: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Tuesday, September 19, 2017 10:10:43 AM |
| **Attachments:** | 4 RAN MOF ENERGY - Change of Law Protecition Agreement v4.doc<br>ATT00001.htm<br>1b Draft TB20 Submission_Provincial Protection Agreement_V8_clean.pdf<br>ATT00002.htm |

---

Good morning,

Please find attached, the draft TBS Assessment note on the Provincial Protection Agreement. Please review and provide comments to me by 3:00pm this afternoon and I will consolidate comments for Gadi's review.

With respect to James' questions, I'll follow up separately and I expect some will be answered in the updated draft of the submission (with final term sheet).

Thank you, Anna

Sent from my iPhone

Begin forwarded message:

> **From:** "Strang, James (TBS)" <James.Strang@ontario.ca>
> **To:** "Anthony Reiss (MGS)" <Anthony.Reiss@ontario.ca>, "Pratima Gounden (ENERGY)" <Pratima.Gounden@ontario.ca>
> **Cc:** "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Anna Strathy" <Anna.Strathy@ofina.on.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>, "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Indira Komal (MCSCS)" <Indira.Komal@ontario.ca>, "Lenna Wichenko (MCSCS)" <Lenna.Wichenko@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>
> **Subject: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC**
>
> Hi,
> Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.
> Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).
>
> <!--[if !supportLists]-->● <!--[endif]-->Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make

sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify.

<!--[if !supportLists]-->o <!--[endif]-->Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope?

<!--[if !supportLists]-->● <!--[endif]-->What are derivative agreements? Payments under derivative agreements?

<!--[if !supportLists]-->● <!--[endif]-->Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market?

<!--[if !supportLists]-->● <!--[endif]-->Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA?

Thanks in advance,

James Strang
416-327-2071

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| | **Ministry:** | Energy & Finance |
| | **Meeting Date:** | September 26, 2017 |
| | **Agenda Class:** | Discussion (In-Camera) |
| | **Last reviewed by:** ENERGY TB/MBC May 9, 2017 | **Tracking to:** Fast Track Cabinet (September 27, 2017) |

| **SUBMISSION TITLE:** | Change of Law Protection Agreement<br>(Supports Ontario Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the *Ontario Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the *Ontario Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.<br><br>– Under certain circumstances, the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG) | *Approve* |
| Authorize that the Minister of Finance and Minister of Energy to provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017.*<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |
| Recommended program base | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Offset Recommended | 0.0 | 0.0 | 0.0 |
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the *Ontario Fair Hydro Plan Act, 2017*, (OFHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

The OFHPA provides for the IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this, in a May 2017 TB/MBC item reviewing proposed Ontario Fair Hydro Plan legislation, through Province assurance and guarantee provisions, was recommended.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; and
- [Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.
  - *Note: this third protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.*]

*….the third bullet isn't change of Law related?…*

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

- In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers. This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement.
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (Interest On Debt (IOD) expense) will depend on whether or not some portions of the OFHPA continue in some form, or not.

- For example if the If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.
- Debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 18, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE (UNDER DEVELOPMENT)

Approve the Ministries plan for implementing provisions of the *Ontario Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. In particular, that under certain circumstances the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG).

In this regard,

i) Authorize that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet including in the TB/MBC Submission, (… minuting an attachment?…or include key parameters in minute only, given request for the subject to revisions provision…) and subject to such revisions that the two ministers acting together may determine;

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

# APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM *ONTARIO FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

# APPENDIX D: NON-BINDING TERM SHEET

## APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

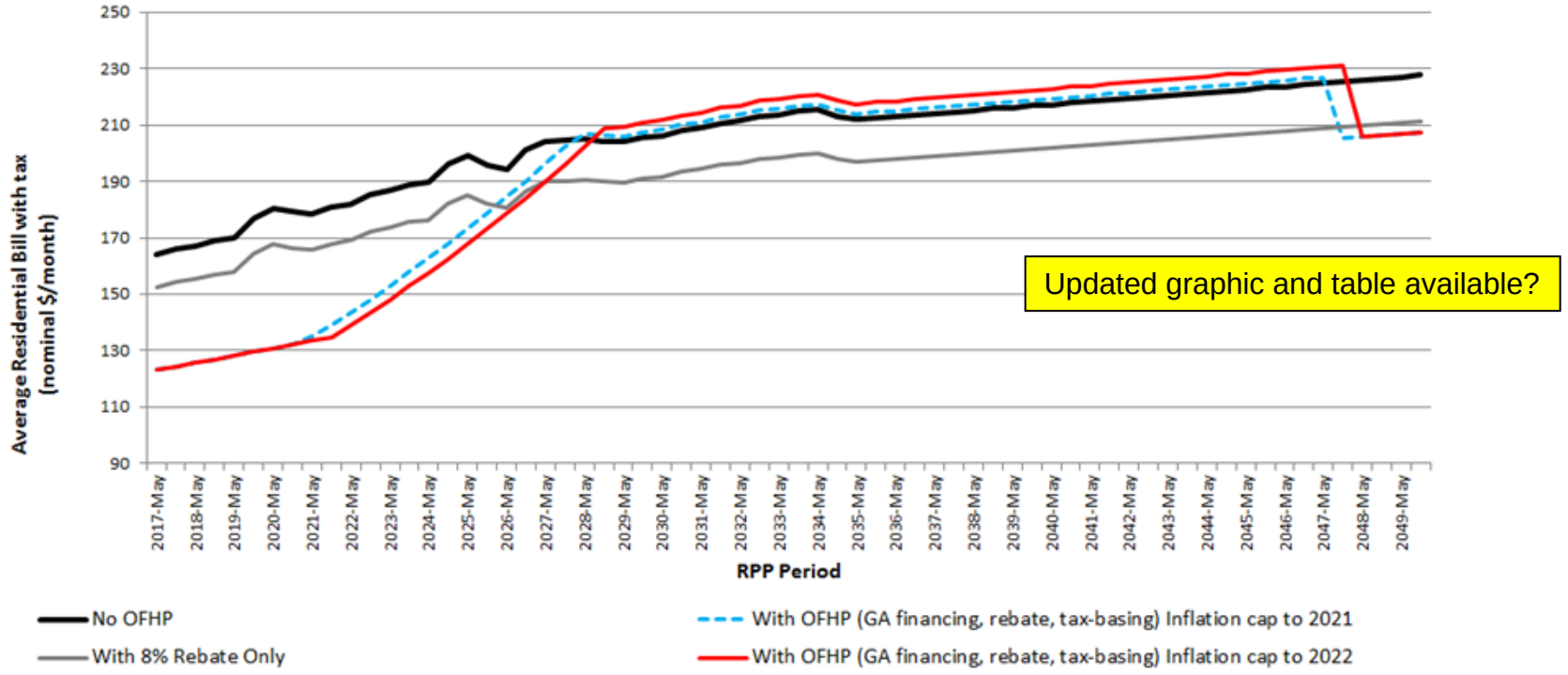
| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br><br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

## APPENDIX E: PROFILE GLOBAL ADJUSTMENT SMOOTHING FOR RPP – ELIGIBLE ONLY – MAY 2017 TB/MBC SUBMISSION

The following graphic and table shows the multi-year profile of the planned approach to GA Smoothing that was included with the May 2017 TB/MBC Submission. The table below supports the Ministries assessment that the potential contingent liability under the protection agreement over the duration of the OFHP would peak at an estimated $24M to $26B (subject to final cost forecasts TBC), including principal and interest.




| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 | 2037 | 2038 | 2039 | 2040 | 2041 | 2042 | 2043 | 2044 | 2045 | 2046 | 2047 | 2048 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Average monthly bill with OFHP ($/month) | 124 | 126 | 129 | 131 | 137 | 146 | 155 | 165 | 176 | 187 | 199 | 207 | 207 | 209 | 212 | 214 | 216 | 216 | 214 | 215 | 216 | 217 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 216 | 206 |
| Year-over-year change (%) | n/a | 2.01 | 2.01 | 2.01 | 4.25 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 3.61 | 0.08 | 1.20 | 1.29 | 1.14 | 0.93 | -0.04 | -0.88 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | -4.37 | -4.61 |
| Impact of GA financing and tax-basing ($/month) | -29.9 | -30.0 | -35.0 | -34.4 | -28.8 | -24.0 | -17.8 | -14.2 | -3.3 | 3.4 | 12.2 | 16.4 | 16.5 | 16.7 | 16.9 | 17.1 | 17.2 | 17.1 | 17.0 | 17.1 | 17.2 | 17.3 | 17.4 | 17.5 | 17.6 | 17.6 | 17.7 | 17.8 | 17.9 | 18.0 | -3.9 | -4.0 |
| Total accumulated debt ($B) | 2.5 | 5.2 | 8.2 | 11.6 | 14.7 | 17.5 | 19.9 | 22.0 | 23.5 | 24.1 | 24.2 | 23.7 | 23.1 | 22.5 | 21.8 | 21.0 | 20.1 | 19.2 | 18.3 | 17.2 | 16.1 | 14.9 | 13.7 | 12.3 | 10.9 | 9.3 | 7.7 | 5.9 | 4.1 | 2.1 | 0.0 | 0.0 |
| Total change in accumulated debt ($B) | 2.5 | 2.6 | 3.0 | 3.5 | 3.1 | 2.8 | 2.4 | 2.0 | 1.6 | 0.6 | 0.1 | -0.5 | -0.6 | -0.6 | -0.7 | -0.8 | -0.8 | -0.9 | -1.0 | -1.0 | -1.1 | -1.2 | -1.3 | -1.4 | -1.4 | -1.5 | -1.6 | -1.7 | -1.9 | -2.0 | -2.1 | 0.0 |

**Notes:** Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

# APPENDIX F: OVERVIEW OF RISKS

Prepared by TBS staff, the following chart, as part of the May 2017 OFHP implementation update focused on the proposed legislation. It provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

The current submission, Change of Law Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" (page 16) as part of risk mitigating strategy.

*Global Adjustment Partial Refinancing:*

**Objective:** Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements.<br>• Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG.<br>• Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |
| A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Medium<br>**Risk Impact:** High<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and close monitoring of costs and changes in variables built into model.<br>• Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Moderate<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases.<br>• Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing. | Risk can be avoided by:<br>• Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure.<br><br>Risk can be mitigated by:<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.<br>• Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br><br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited.<br>• An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG. |
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and ongoing monitoring of costs and changes in variables built into model.<br>• Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

*Electricity social programs (Enhancing Electricity Support & Conservation Programs):*

**Objective:** Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Timescale:** 12 to 24 months<br><br>**Rationale:**<br>• The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate.<br>• Fiscal projection is highly dependent on factors which can fluctuate from year to year, including:<br>o electricity usage;<br>o distributions costs; and<br>o consumer consumption patterns that may change due to extreme weather or other factors.<br>• Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs.<br>o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models. |

# CHANGE OF LAW PROTECTION AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

DRAFT

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; and
- [Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations. *Note: this third protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017*.]

In the event the protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) to enter into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance, together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Authorize that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

# APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br><br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | Fwd: QA AG Report OFHP Technical Briefing |
| **Date:** | Sunday, October 15, 2017 8:32:34 AM |
| **Attachments:** | QA_AG Report OFHP_Technical Briefing_Oct 13_600.docx<br>ATT00001.htm<br>TBS FHP QAs 20171013 (2)_OPCD clean.docx<br>ATT00002.htm |

---

FYI attached, final Q&As and technical deck. I haven't done a thorough comparison, but it looks as though our edits have been accepted.

Gadi, these will be the materials used at tomorrow's 8am meeting.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 14, 2017 at 3:15:22 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: QA AG Report OFHP Technical Briefing**
>
> Hi Folks,
>
> Attached are the QAs for the AG OFHP Report. This version incorporates input from OFA. Attached is also the TBS QAs, which we've kept as a stand-alone product since it's very technical and specific to TBS (also attached).
>
> These will be used at Monday morning's meeting along with the technical deck which is still being finalized.
>
> Thanks,
> Martin

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred electricity system costs should be borne by the rate-base and not the tax-base.

Based on this policy decision, it was decided that the debt obligation would be recognized as a regulatory asset that would be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (i.e., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be noted that the FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total estimated cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2018 period; and
- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% down to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages approximately $20 billion in segregated nuclear funds to manage nuclear liabilities, and, is an electricity sector entity regulated by the Ontario Energy Board (OEB) with extensive experience with regulatory deferral and variance accounts.

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties (…) Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Based on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province. Why not have the Province borrow for the OFHP?**

The policy objective of OFHP is to more fairly allocate the cost to ratepayers over the useful life, not the contractual term, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base.

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected in different interest costs. Having the rate-base pay is not a new policy, for example Hydro One has borrowed in the capital markets since the early 2000s.

The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report and is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's 2016 annual report, which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 2015) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is, however, silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the accounting framework in North America that provides the most developed guidance on rate regulated operations.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the policy and implementation process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan a structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy;
- Ministry of Finance;
- Treasury Board Secretariat;
- Office of the Provincial Controller;
- Cabinet Office;
- Ontario Financial Authority (OFA);
- Independent Electricity System Operator (IESO); and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

**Response prepared by TBS as Part of the Minister's Speaking Points**

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.
- Six other IESO like entities in other North American jurisdictions recognize the economic effects of rate-regulated accounting (i.e., AESO, IEO, NYISO, PJM and ERCOT)

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

# Ontario's Fair Hydro Plan

## QUESTIONS & ANSWERS

*TBS*

### Key Messages

- The government respects independent officers of the legislature, and values the important perspective they bring but does not agree with the assertions and conclusions expressed in the Auditor General's Fair Hydro Plan report.

- The government has a strong track record of producing high-quality financial reports on a timely basis and continues to present the province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards.

- In developing the Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

- The Fair Hydro Plan operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards and ensures the goals underlying the program are achieved in a cost-effective manner.

- The implementation of Ontario's Fair Hydro Plan is ongoing, with significant decisions with accounting and financial implications still being finalized. The financing plan and its impact will continue to be transparent and fully available to credit rating agencies, securities regulators, and the public.

- The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General in providing its independent views to the Legislative Assembly.

DRAFT

## Top Questions

1. **The Auditor General says that the accounting structure for Ontario's Fair Hydro Plan is not transparent, has poor value for money, and is not in accordance with Public Sector Accounting Standards. How do you respond?**

   The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

   The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

   With regards to the Auditor General's report on Ontario's Fair Hydro Plan (OFHP) – while the government does not agree with the assertions and conclusions expressed in the report, the government thanks the Office of the Auditor General for its report.

   OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results is transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

DRAFT

The Ministry of Energy would welcome further questions about OFHP and the government's investments in a reliable energy system.

2. **The Auditor General makes two recommendations in her report – to record the true financial impact of Ontario's Fair Hydro Plan; and to use a financing structure that is the least costly for Ontarians. Will you adopt these recommendations?**

   The government does not agree with the assertions and conclusions expressed in the report.

   In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

   On the point of "a financing structure that is the least costly for Ontarians": Program area to develop a stronger argument for this point.

   **Commented [HS(1]:** OFA

   The OFHP financing structure has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

DRAFT

Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Office (FAO).

Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

The Province will continue to prepare its consolidated financial statements in accordance with PSAS and continue to build on a track record of responsible fiscal management.

3. **Both the Auditor General and the Financial Accountability Officer have raised serious concerns about the accounting treatment of the electricity cost refinancing initiative. Why should Ontarians believe this government over two independent officers of the Legislature?**

The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history.

In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with PSAS and continue to build on its track record of responsible fiscal management.

4. **The Auditor General says that you are "obfuscating" the true financial impact of Ontario's Fair Hydro Plan through a "needlessly complex" accounting structure. How do you respond?**

   Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   OFHP is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   While the implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized, the financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

5. **Why do you keep differentiating between ratepayers and taxpayers? At the end of the day, the cost of Ontario's Fair Hydro Plan is being borne by Ontarians now and in the future.**

   Ontario's Fair Hydro Plan (OFHP) operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The framework has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

Need more information from program area re: rationale in differentiating between ratepayers and taxpayers.

Commented [HS(2]: energy

6. **How can you justify the $4 billion in additional interest expenses that will be borne by ratepayers because of the way the government has structured electricity cost refinancing (i.e. using Ontario Power Generation to finance 55 per cent, at a higher interest rate than the Province, instead of the Province financing the entire electricity cost financing)?**

   Ontario's Fair Hydro Plan (OFHP) is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   The accounting will reflect the economic substance of the transactions in accordance with Public Sector Accounting Standards (PSAS) and will differentiate those costs of OFHP borne by taxpayers versus those borne by ratepayers.

   The Auditor General's report suggests that all the costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Officer (FAO).

   Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

   For further questions about borrowing estimates, please contact the Ministry of Finance.

7. **The AG claims that when the government first gave Ontarians an 8 per cent break on their bills, it was reported on the books properly. She says when it jumped to 25 per cent, the accounting changed. Isn't it obvious you're cooking the books to suit your needs?**

   - *Need information from program area*

8. **The Auditor General said that a similar move to legislate accounting to defer costs was proposed with the restructuring of the Ontario electricity sector in the late 1990s, but the Auditor General's opinion at that time was that this would represent a departure from a central tenet of generally accepted accounting principles. The government at that time heard these concerns, and made the decision to not create an asset for future anticipated ratepayer payments. Why does the government think this is ok now?**

   The Auditor General's report makes a comparison between Ontario's Fair Hydro Plan (OFHP) and the Ontario Electricity Financial Corporation (OEFC) stranded debt. There are, however, crucial differences between the two.

   For example, the OEFC stranded debt had already been incurred when the restructuring took place.

   In the case of OFHP, the difference between what will be collected and what will be paid to generators is considered to be an asset in accordance with the accounting definition, as it will generate a specific future revenue stream in the form of the CEA.

   It is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and the 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer is a normal rate-setting regulatory practice.

   The Debt Retirement Charge (DRC) represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).

   The OFHP Global Adjustment deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (versus the contract lengths that may be shorter than the expected useful life of the assets).

   The difference between the 1999 restructuring and OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers.

   The intention of OFHP is to be forward-looking, to ensure that ratepayers are sharing current and future costs, whereas the DRC was backward-looking,

replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.

9. **What will happen if interest rates rise? The Financial Accountability Officer (FAO) estimates that if interest rates were to rise, the true cost of Ontario's Fair Hydro Plan could be between $69 and $93 billion. How can you justify shifting this heavy burden onto future generations?**

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs of Ontario's Fair Hydro Plan (OFHP), and while total borrowing costs will not be known until the program is complete, accumulated interest is expected to be considerably less than the estimates cited in the May 2017 report of the Financial Accountability Office (FAO).

   Total borrowing estimates over the thirty year life of Ontario's Fair Hydro Plan (OFHP) have been revised down substantially by the government since the Financial Accountability Office (FAO) released its report, and borrowing costs are now forecast to be substantially lower than original estimates.

   Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

## Government Officials

10. **The Auditor General says that even your own government officials flagged the unnecessarily high costs of Ontario's Fair Hydro Plan – and yet you chose to proceed. How can you justify this?**

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    Multiple options were considered in creating the OFHP framework – such as to have local distribution centres finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some local distribution centres to finance the balances.

    The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

Ultimately, OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

## Audit Opinion

**11. The government just received another qualified audit opinion on its Public Accounts – this time based on two separate issues. Why do you continue to disagree with the Auditor General?**

The government continues to move forward and present the Province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards (PSAS). Ontario has a strong track record of producing high-quality financial reports on a timely basis. The Auditor General's qualified opinion is based on a different interpretation of PSAS for net pension assets and recognition of market accounts.

Last year there was a disagreement among the Province's professional accounting staff and the Auditor General's Office on the appropriate application of PSAS regarding pension accounting. As a result, the Pension Asset Expert Advisory Panel was established to deliver independent advice and recommendations on the issue to the Province.

The independent panel members concluded the Province's share of the net pension assets of both the Ontario Teachers' Pension Plan and the Ontario Public Service Employees' Union Pension Plan should be recognized in Ontario's financial statements.

After significant deliberation, including consideration of the recommendations of the panel, Ontario confirmed that the accounting for these plans prior to 2015-16 was appropriate, and are prepared in accordance with public sector accounting standards for pension asset accounting. Further, EY provided additional analysis and concluded that no valuation allowance was required for either plan as of March 31, 2017. The 2016-17 financial statements include these pension assets, and we continue to apply the accounting treatment of pension assets that the Province has used consistently since 2001. In addition, the 2015-16 financial statements were restated to include these assets.

This year the Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects the financial position of the IESO-administered markets at year-end. This change was supported by the IESO's audit committee, its independent external auditor, and finally by the Office of the Provincial Controller. This change

also has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

**12. The Auditor General says that you anticipated the government would receive a qualified audit opinion – and accepted this risk. In the private sector this would be unacceptable. How do you figure you can get away with this?**

The Province's financial statements are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

DRAFT

**13. Are you concerned that the Auditor General will issue an adverse opinion on the Province's Public Accounts due to Ontario's Fair Hydro Plan accounting? What would be the impact on the Province's credit rating?**

It would be inappropriate to speculate about how the Auditor General may issue an opinion for Public Accounts next year. The implementation of Ontario's Fair Hydro Plan (OFHP) is ongoing, with significant decisions with accounting and financial implications still being finalized.

The Ministry of Energy, Finance, and the Treasury Board Secretariat continue to work closely with Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), as well as third-party experts to ensure due diligence.

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

The financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

**14. The Auditor General says that she has consulted with all of the Auditor Generals in Canada – and they agree with her assessments. How are we supposed to believe this government when all independent auditors in the country say you are wrong?**

In developing Ontario's Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

DRAFT

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

15. **Are you going to hire an expert advisory panel, as you did on the pension asset accounting matter, to settle this dispute with the Auditor General? If so, what authority would this panel have?**

    There are no plans to establish a panel at this time.

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    The Province will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

## Independent Electricity System Operator (IESO)

16. **The Auditor General was critical of the Independent Electricity System Operator's accounting changes, which formed part of her basis for a qualified opinion in the 2016-17 Public Accounts. Are these accounting changes inappropriate?**

    *On recognizing market accounts' assets:*

    The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of the IESO-administered markets at year-end.

This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

This change has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

*On rate-regulated accounting:*

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

## Rate-regulated Accounting

**17. Why use rate-regulated accounting? What is its benefit?**

In certain circumstances, an organization may be required to incur a large expenditure that will be recovered from ratepayers in the future.

For example, damage caused by an ice storm that results in extraordinary costs to restore a disruption of electricity services for customers. Such costs are subject to application and approval for recovery by the regulator over a specific time period.

DRAFT

What rate-regulated accounting does is it allows organizations to recognize those costs, which can be significant within a year but will generate benefits over time, to be matched over the same period that the amounts are recovered from ratepayers.

**18. The Auditor General says that the Independent Electricity System Operator's decision to adopt rate-regulated accounting was a deviation from Public Sector Accounting Standards, and cautioned against its use in her Independent Auditor's Report. Why was this change made and was it appropriate?**

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

Paragraph 11 of the *Introduction to Public Sector Accounting Standards* ("Introduction") states: "When applying the CPA Canadian Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles (GAAP), Section PS 1150."

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

It is worth noting that currently 8 out of 9 electricity system operators in North American markets employ accounting for rate-regulated assets, including the IESO.

**19. The Auditor General says that the use of rate-regulated accounting is inappropriate for the Independent Electricity System Operator and the Ontario Energy Board according to U.S. Generally Accepted Accounting Principles. How do you respond?**

In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the Auditor General's report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must an independent regulator." This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

> *"The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers"*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically to not preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent (FAS 71, par. 64).

In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One – both of which are regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

*IESO Response:*

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

## Legislated Accounting

**20. The Auditor General says that you are essentially making up your own accounting rules. How are Ontarians supposed to believe things like a "balanced budget" when you keep changing the rules?**



DRAFT

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The OFHP operates under a financial and accounting framework that is appropriate for its intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS). The recording of any asset resulting from transactions of OFHP will be assessed for recognition and measurement based on PSAS, and where appropriate, other accounting guidance where PSAS is silent on the issue.

**21. The Auditor General says that the Province legislated accounting through the Ontario Fair Hydro Plan Act, which is not allowed according to Public Sector Accounting Standards. Is this true?**

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based – they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

The role of the Ontario Energy Board (OEB) and its mandate is provided in legislation. It is not uncommon for government policy, through regulations, to provide the ground rules over which the OEB is to preside.

This is the case with Ontario's Fair Hydro Plan (OFHP) itself, as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review, and make conclusion on submissions brought forward.

## Relationship with the Office of the Auditor General

**22. The Auditor General alleges the government withheld information from her on the accounting treatment for Ontario's Fair Hydro Plan. Why would she say that?**

The government is committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

The implementation of Ontario's Fair Hydro Plan is ongoing, with significant accounting and financial decisions still being finalized.

Senior ministry officials have met and continue to work with the Office of the Auditor General by participating in interviews and providing documentation.

*If pressed:*

The Auditor General was informed throughout the course of this process. Program area to add details (i.e. number of meetings, documents, etc.)

*If asked about the Ministry of Energy emails:*

The Ministry of Energy, Finance, and the Treasury Board Secretariat are committed to assisting the Auditor General. For questions related to the Ministry of Energy, please contact them directly.

## Future Governments

**23. The Auditor General says that you are essentially handcuffing future governments with your financing structure. Why should future governments have to pay for your decisions?**

By responsibly managing the Province's finances, Ontario balanced the budget in 2017-18, and will maintain a balanced budget for the future.

With a growing economy and a balanced budget, this is the time to make investments in key services that matter most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

Over the last decade the government has rebuilt our electricity transmission and distribution grid, invested in clean generation, and closed the last coal-fired



DRAFT

power plant. Prices have increased because our electricity system is being transformed – more than $50 billion has been invested to modernize the system.

The government heard from people across the Province that the price of electricity had risen too quickly, which is why Ontario's Fair Hydro Plan (OFHP) will ensure costs are shared more fairly over the years ahead.

As Ontario invested in renewing our electricity system, the government invested in many new generating facilities, most of which operate under 20-year contracts. Some of these generators are expected to provide value to the electricity system beyond their contract lives. There is an opportunity to recognize the long-term benefit of these assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

To relieve the current burden on ratepayers and share costs more fairly, a portion of the Global Adjustment (GA) is being refinanced. Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

In the early years, a portion of the costs covered by the GA is being refinanced to reduce pressure on today's electricity ratepayers. In later years, the cost of refinancing will be recovered from ratepayers.

OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and ensures the goals underlying the program are achieved in a cost-effective manner.

The government recognizes that a fiscally sound approach to managing the Province's finances will provide the foundation for the long-term well-being and prosperity of Ontarians, and protect the public services that Ontarians rely on.

For further questions related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

**24. Q re: Loss of Public Trust**

## Asset Sales

**25. Will you buy back Hydro One so that it is back under public control?**

For questions related to asset sales planning, please direct your questions to the Ministry of Finance.

**26. What else will you sell just so that you can "balance the budget"?**

The government has restored balance through targeted, measured and fiscally responsible decisions — managing growth in program spending and fostering job creation and economic growth.

A balanced budget also gives the government the fiscal flexibility to do more to help people. This is the time to make investments in key services that matter most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

The government is committed to dedicate net revenue gains from the sale of designated assets to the Trillium Trust, which is helping to fund transit, transportation and other key infrastructure projects across Ontario.

For any questions related to asset sales planning, please direct your questions to the Ministry of Finance.

## Government Advertising

**27. How can you justify spending $5.5 million on self-congratulatory advertising for Ontario's Fair Hydro Plan?**

The government continues to communicate useful, factual information to the public while maintaining Ontario's status as a national and international leader in government advertising oversight.

Ontario is the first and only jurisdiction in Canada to have legislation that bans government-paid partisan advertising in newspapers, magazines, billboards, radio, and television.

Ontario needs government advertising that is appropriate, reasonable and effective because the public has a right to know how public money is being spent, and why the government is bringing forward important policy changes.

At this time, I would like to clarify that the Treasury Board Secretariat is *not* responsible for individual line ministry advertising campaigns, and does not determine how much funding is allocated to any campaign.

DRAFT

For further questions about specific advertisements or advertising campaigns related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

***28. Placeholder: Q regarding Advertising Standards Council***

## Executive Compensation

**29. How can you justify the exorbitant salaries paid to Hydro One executives when families are struggling to pay their hydro bills?**

The government remains committed to ensuring transparency and accountability in how broader public sector employers manage executive compensation.

However, Hydro One is now a publicly traded company, and decisions regarding compensation are not made directly by the government.

For further questions about executive compensation and oversight of specific organizations, please contact the Ministry responsible.

DRAFT

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Subject:** | Fwd: Updated Materials |
| **Date:** | Tuesday, October 03, 2017 9:50:09 PM |
| **Attachments:** | Government Response to AG FHP Report - Oct 3 840pm CLEAN.docx<br>ATT00001.htm<br>Government Response to AG FHP Report - Oct 3 840pm TRACKED.docx<br>ATT00002.htm<br>AG FHP Report - Consolidated Comments - Oct 3 840pm CLEAN.docx<br>ATT00003.htm<br>AG FHP Report - Consolidated Comments - Oct 3 840pm TRACKED.docx<br>ATT00004.htm<br>AG Report - Draft DM Response Letter - Oct 3 1200pm_clean.doc<br>ATT00005.htm |

---

FYI attached, and please let me know if you have any comments as soon as possible.

Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

**From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
**Date:** October 3, 2017 at 8:57:03 PM EDT
**To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: Updated Materials**

Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

<!--[if !supportLists]-->● <!--[endif]-->In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to

'N'.

<!--[if !supportLists]-->● <!--[endif]-->Please have staff review the documents one last time and ask that they note any required changes in the clean versions.

<!--[if !supportLists]-->● <!--[endif]-->The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.

<!--[if !supportLists]-->● <!--[endif]--><u>**Please reply-all with any edits by 11:00AM**</u>.

<!--[if !supportLists]-->● <!--[endif]-->I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.

<!--[if !supportLists]-->● <!--[endif]-->I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**WORKING DRAFT – GOVERNMENT RESPONSE TO AGO REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report entitled *The Fair Hydro Plan: Concerns About Fiscal transparency, Accountability and Value For Money*.

Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. In the development of OFHP, which includes a rebate equal to the provincial portion of the Harmonized Sales Tax, shifting the funding of specified electricity support programs to provincial revenues and refinancing a portion of the Global Adjustment (GA), the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure appropriate due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. .

To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA, which pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector and PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

As previously noted, OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers and some of which will be borne by ratepayers. The accounting, the final analysis and documentation of which will be completed by the year-end, once the transaction is complete, will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance these deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since FAO released its report in May 2017 and OPG's and its financing entity's borrowing costs are now forecast to be substantially lower than original estimates. As a result, current government estimates forecast that the peak debt over the 30-year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments highlighted above and given that implementation of OFHP is still ongoing with significant accounting and financing decisions still being finalized, the government believes that this report by the OAG is premature and does not reflect the substance of this transaction.

**WORKING DRAFT – GOVERNMENT RESPONSE TO AGO REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report entitled *The Fair Hydro Plan: Concerns About Fiscal transparency, Accountability and Value For Money*.

Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. ~~The government believes that this report is premature given that implementation of Ontario's Fair Hydro Plan (OFHP) is still ongoing with significant accounting, economic modelling and financing decisions still being finalized.~~ In the development of OFHP, which includes a rebate ~~of~~ equal to the provincial portion of the Harmonized Sales Tax, shifting the funding of specified electricity support programs to provincial revenues and refinancing a portion of the Global Adjustment (GA), the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure appropriate due diligence was completed. ~~Preliminary options, highlighted in the Office of the Auditor General's (OAG) report, should not be interpreted as "signifying" a specific intent on the part of the government to pursue those options, namely the incorrect assertion by the OAG that government specifically sought out a complex financial transaction simply to avoid recognition of additional expenses and provincial debt. In addition, the OAG is incorrect when it states that the government legislated the accounting of the OFHP.~~OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner. ~~In addition, the OAG is incorrect when it states that the government legislated the accounting of the OFHP.~~

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, ~~,~~ third-party experts have confirmed that many of these generators will be able to continue to operate. This ~~past their contract term,~~ means ~~ing~~ that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. ~~On behalf of the Ministry of Energy, In support of OFHP development and implementation, legal, accounting, financial and energy sector third-party experts were consulted to provide advice and ensure appropriate due diligence was completed.~~

~~Navigant Consulting, Inc. was retained to prepare an expert report, which confirms that many generators will be able to operate past their contract term.~~

To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA, which pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian ~~Public Sector Accounting Standards (~~PSAS~~)~~ and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector and PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that

rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both ~~are~~ regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

~~The OAG states that the Province's planned accounting inappropriately transfers long-term accountability for higher electricity bills to future governments.~~ As previously noted, OFHP is comprised of a series of policy decisions, some of which will be borne by taxpayers and some of which will be borne by ratepayers. The accounting, ~~which will be determined within the next six months~~the final analysis and documentation of which will be completed by the year-end, once the transaction is complete, will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance these deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates ~~for~~ over the thirty year life of the program have been revised down substantially by the government since FAO released its report in May 2017 and OPG's and its financing entity's borrowing costs are now forecast to be substantially lower than original estimates. As a result, ~~final~~ current government ~~figures~~ estimates ~~show~~ forecast that the peak debt ~~under~~ over the 30-year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments highlighted above and given that implementation of OFHP is still ongoing with significant accounting~~, economic modelling~~ and financing decisions still being finalized,~~Ontario's Fair Hydro Plan is delivering the single largest reduction in electricity rates in the province's history. The plan operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with PSAS and ensures that the fairness goals underlying the program are achieved in a cost effective manner.~~The the government believes that this report by the OAG is premature and does not reflect the substance of this transaction. ~~given that implementation of Ontario's Fair Hydro Plan (OFHP) is still ongoing with significant accounting, economic modelling and financing decisions still being finalized.~~

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure appropriate due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | OEFC 2016-17 Annual Report |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset and in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).<br><br>The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the | |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that way already spreading the cost recovery of the debt over time.<br><br>The penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used to appropriate account for rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of the Fair Hydro Plan will be assessed for recognition based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by ~~(~~specified~~)~~ electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~***cost not expected to exceed $60,000***~~ *for a maximum of $500,000, to* ***provide search services and to compile emails responsive to our request.*** ~~*receive help from a law firm to review the Ministry's emails before providing them to us.*~~ *At the time we completed this Special Report, the Ministry had* ***provided us with*** ~~***over 4,000***~~ ***6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments ~~4,063 documents,~~ as of October 3, 2017~~September 26, 2017~~. The Ministry does not intend to spend more than $60,000 on this request. | ~~TBD~~NY |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall** ~~the government needs to borrow cash to cover the shortfall~~"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection). | N |

**Formatted:** Strikethrough

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Suggest correcting this reference throughout the AG report. | |
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>~~Add additional language to this sentence to provide for a more balanced tone.~~DSuggest delete ~~ing~~ this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure appropriate due diligence was completed." | N |

**Formatted:** Strikethrough

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>~~Delete this sentence to provide for a more balanced tone.~~ Delete ~~removing~~ reference to "around" as it is inaccurate. ~~as g~~Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N~~/A~~ |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by ~~Ontario Financing Authority (OFA)~~ the Province in borrowing money for its equity infusions into OPG. | ~~TBD~~N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts).<br><br>~~Suggest also removing the reference to future ratepayers not owing anything until they consume electricity in the future.~~ | ~~TBD~~Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | OEFC 2016-17 Annual Report |

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. ~~,~~ T~~t~~he latter ~~was~~ had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what ~~is~~ will be collected and what will be paid ~~out~~ to ~~the~~ generators ~~is going to~~will be set up as an asset and in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. ~~that~~ It effectively ~~represented the effective amortisation~~ amortized the ~~of~~ cost ~~recovery~~ of the investments in long-lived assets (including debt incurred). ~~to cover the cost to invest in long-lived assets. This was a normal practice and would have been very unusual to recover the investment capital outlay in the years invested from those ratepayers and unfair, as the benefit of those assets would be in place for decades. As such, it was fair to incur debt and recover those costs over time, including as continued on through the DRC post-1999.~~ | |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that way already spreading the cost recovery of the debt over time.<br><br>The penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | The first sentence of the second paragraph states:, As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used to appropriate account for rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of the Fair | N |

**Commented [MD(1]:** OFA comment:
FYI for OPCD – we changed this from "accumulated surplus" to "accumulated deficit" to be consistent with the way it is reported in the Budget.

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Hydro Plan will be assessed for recognition based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | |
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is ~~factually incorrect~~incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | ~~TBD~~N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting | Y |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.<br><br>Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. ~~because t~~The -IESO ~~b~~Board made the decision to amend its financial statements. | Y |
| ~~4.5~~ | ~~15~~ | ~~The third paragraph notes "Our research has confirmed that the IESO is the only…" is factually incorrect. The Ontario Power Authority reported rate regulated assets. As an example, the December 31, 2008 financial statements are attached. The Ontario Power Authority was consolidated on a line by line basis in the consolidated financial statements of the Province.~~ | ~~Y – December 31, 2008 financial statements~~ |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG). | Y |

**Commented [MB2]:** OPCD to review

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

DRAFT

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

**Ministry of Finance**

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

**Ministère des Finances**

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

**Treasury Board Secretariat**

Deputy Minister, Treasury Board
Secretary of Treasury Board and
Management Board of Cabinet

Room 5320, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1A1
Tel.: 416-325-1607
Fax: 416-325-1612

**Secrétariat du Conseil du Trésor**

Sous-ministre, Conseil du Trésor
Secrétaire du Conseil du Trésor et du
Conseil de gestion du gouvernement

Édifice Whitney, bureau 5320
99, rue Wellesley Ouest
Toronto (Ontario) M7A 1A1
Tél. : 416 325-1607
Téléc. : 416 325-1612

**Ministry of Energy**

Office of the Deputy Minister

Hearst Block, 4th Floor
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6758
Fax: 416-327-6755

**Ministère de l'Énergie**

Bureau du sous-ministre

Édifice Hearst, 4e étage
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6758
Téléc: 416-327-6755

Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
Toronto, Ontario M5G 2C2

October 4, 2017

Dear Ms. Lysyk,

Thank you for the opportunity to review and provide feedback on your draft special report, *The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money*.

As per your letter to Deputy Thompson, dated September 26, 2017, our review focused on confirming the factual accuracy of the report. Please find enclosed succinct written comments and suggestions resulting from our ministries' coordinated review.

We have also enclosed a government response to the special report. Given the nature and the complexity of the issues, the response needed to be longer than the word limit you proposed.

As you know, as part of its preparations for the development of the implementation of the Government's Fair Hydro Act, Navigant Consulting was engaged to conduct analysis and prepare a report. The report was commissioned in June 2017 and completed at the end of September 2017. Although the report was not commissioned as a result of your audit or to respond to any questions raised by your office as part of your audit process, we believe it does contain information relevant to your audit. As per your letter which noted that we should share any other information that may be relevant, we felt it would be appropriate to share a confidential copy of the report with your office in advance of it being made public.

…/con't

Once your office has had the opportunity to review the enclosed information, you may find it useful to have further meetings with ourselves and/or staff from our ministries. We will be pleased to make ourselves available to provide clarification or to answer any additional questions. Our Ministers are also available to meet with you to discuss your report and the government response during the week of October 9th.

The Ministry of Finance, Treasury Board Secretariat and the Ministry of Energy are committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

Sincerely,

| | | |
|---|---|---|
| Scott Thompson | Helen Angus | Serge Imbrogno |
| Deputy Minister | Deputy Minister | Deputy Minister |
| Ministry of Finance | Treasury Board Secretariat | Ministry of Energy |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ronald Kwan |
| **Subject:** | Government Response to AG FHP Report_Sep29-17 v4.1.docx |
| **Date:** | Sunday, October 01, 2017 1:23:53 PM |
| **Attachments:** | Government Response to AG FHP Report_Sep29-17 v4.1.docx |

---

Hi Anna

Pls see a few edits and comments on the Government response, I am ok with the consolidated comments.

Thanks and happy to discuss tomorrow.

Ken K

**WORKING DRAFT – GOVERNMENT RESPONSE TO AGO REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and recommendations expressed by the Office of the Auditor General (OAG) in its report entitled *The Fair Hydro Plan: Concerns About Fiscal transparency, Accountability and Value For Money*.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. Ontario's Fair Hydro Plan (OFHP) has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from the reduction.

Since 2003, Ontario has invested nearly $50 billion in the electricity system, including more than $35 billion in electricity generation to ensure the system is clean and reliable. The costs of these investments are funded in part through the Global Adjustment (GA). The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG assertion, many of these generators will be able to operate past their contract term, meaning that generating assets are expected to have ongoing useful life and will benefit future ratepayers by reducing the need to finance the development of new generating assets.

To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG assertion, the financial and accounting framework used to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

Ontario Power Generation (OPG) is beginning the process of raising funds to finance these deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than estimated in the report of the OAG. Total borrowing estimates for the program has been revised down substantially by government since the Financial Accountability Office (FAO) released its report in May 2017 and OPG's borrowing costs are now forecast to be lower than original estimates.

**Commented [KK1]:** Wasn't the borrowing costs estimated in the FAO report and the AG is simply citing that. If so we should say "estimated in the FAO's Report on the OFHP cited by the Ag in her report".

With respect to the Province's financial statements, they are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS) and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector and PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The Government disagrees with two fundamental assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*.

Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does provide the criteria in its entirety, which is as follows:

> *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers.***

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent ~~of another government organization~~ of the Ontario government is contradictory to accepting the use of rate-regulated accounting by OPG and Hydro One, both are regulated by the OEB and whose results are and have been included in the consolidated financial statements of the Province of Ontario, using rate-regulated accounting.

**Commented [KK2]:** I would strengthen this para by pointing out that the rate regulated accounting adopted by both OPG and H1 and regulated by the OEB has been accepted by the markets, external auditors and other independent observers supporting the fact that the OEB is in fact independent of the Ontario Government.

The OAG states that the Province's planned accounting inappropriately transfers long-term accountability for higher electricity bills to future governments. The accounting, which will be determined once the transaction is complete, will reflect the economic substance of the transaction in accordance with PSAS. In addition, the policy decision regarding the allocation of the cost of OFHP to the ratepayers and to the taxpayers is a decision of the current government. The accounting is expected to reflect that allocation decision. A decision of a future government to, for example, move the cost of all of OFHP to the taxpayer, is a decision with economic consequences and therefore, accounting recognition. The report of the OAG suggests that such a decision has no consequences or fiscal impact.

In closing, Ontario's Fair Hydro Plan is delivering the single-largest reduction in electricity rates in the province's history. The plan operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with PSAS as well as ~~and~~ ensuring~~s~~ that the fairness goals underlying the program are achieved in a cost-effective manner.

| | |
|---|---|
| **From:** | William Tan |
| **To:** | Siva Nathan; John Psinas; Alfonso Soriano; Jensen Chong; Risa Thau; Nurudin Kaba; Carlos Yep; George Sakura |
| **Cc:** | Opal Kandelas; Sarah Harris; Ken Kandeepan; James Devine; Mike Manning |
| **Subject:** | IESO OFA FHP and Existing Credit Facility key provisions and Expected Advancements |
| **Date:** | Wednesday, November 15, 2017 4:46:26 PM |

Dear all,

We have executed the following credit facilities:

**1) $2B OFA-IESO Credit Facility in relation to the Ontario Fair Hydro Plan (FHP).**

The FHP Credit Facility has the following key provisions:

- Revolving Credit Facility with a maximum limit at any time of C$2 billion;
- Term: 5 year term which expires September 30, 2022, with last draw possible on September 22, 2022;
- Draws: to be based on minimum of 5 days to a maximum of 95 days;
- IESO may roll-over some or all of the principal and interest;
- Notice Period: For an advance or a rollover, IESO is required to provide two business day prior notice given not later than 10:00 a.m.;
- Business day convention: Following;
- Use of Proceeds: Proceeds of Advances may be used only for IESO's financing needs and requirements of any kind arising in connection with the IESO's role with respect to and obligations under the FHP;
- Interest Rate on Advances: Annual rate equal to the Province of Ontario's cost of funds for borrowings with a similar term as determined by the OFA plus 0.25 percent per annum.

2) **Amending Agreement to reduce limit on Existing IESO-OFA $975M Revolving Credit Facility to $475M (with an Effective Date of November 21, end of day).**

Once effective, the existing Credit Facility will have the following key provisions:

- Revolving Credit Facility with a maximum limit at any time of $475M;
- Term: Agreement expires December 31, 2019, with last draw possible on November 29, 2019;
- Draws: to be based on minimum of 28 days to a maximum of 95 days;
- IESO may roll-over some or all of the principal and interest;
- Notice Period: For an advance or a rollover, IESO is required to provide two business day prior notice given not later than 10:00 a.m.;
- Business day convention: Following;
- Use of Proceeds: IESO shall use the proceeds of Advances for liquidity purposes;
- Interest Rate on Advances: Annual rate equal to the Province of Ontario's cost of funds for borrowings with a similar term as determined by the OFA plus 0.25 percent per annum.

**NEXT DRAW FROM IESO**

In relation to the next IESO draw on November 21st, the following transactions will occur:

**November 17, 2017 -**Three Notices to be received from IESO:

1) **Existing IESO-OFA $975M Revolving Credit Facility for "RRRP Program"**: IESO will send Election Notice instructions to rollover $10,649,081.37 + estimated new advance $2 million (IESO will pay accrued interest of $11,670.23 for Oct 20 to Nov 21 period to OFA).
2) **Existing IESO-OFA $975M Revolving Credit Facility for RPP Program:** IESO to send Election Notice to NOT rollover $825,639,102.00 (IESO will pay accrued interest of $904,809.97 for Oct 20 to Nov 21 period to OFA).
3) **$2B OFA-IESO FHP Credit Facility:** IESO to send a new borrowing notice for a first advance in an amount of approximately $1.05B.

**NOTE:** In the Borrowing Notice for the $2B OFA-IESO FHP Credit Facility, IESO will specify that instead of repaying (by funds transfer) the maturing $825,639,102.00 under the existing IESO-OFA Revolving $975M Credit Facility, it will instead use the $825,639,102.00 to fund a portion of the 'new' $1.05B advance under the $2B OFA-IESO FHP Credit Facility. As a result, for the

Advance under $2B OFA-IESO FHP Credit Facility, the OFA will only transferring net amount of approximately $225 million (that is the difference between $1.05B and $825,639,102.00).

**November 21, 2017** – The following transfers are to occur:

1) **OFA to transfer to IESO** total funds of approximately $227 million for the following:
   - (i) **Existing IESO-OFA $975M Revolving Credit Facility for RRRP Program**: amount of new advance proceeds of approximately $2 million;
   - (ii) **$2B OFA-IESO FHP Credit Facility:** amount of new advance of approximately $225 million.
2) **IESO to transfer to OFA** total funds for the following
   - (i) **Existing IESO-OFA $975M Revolving Credit Facility for RRRP Program**: accrued interest totalling $916,480.20 for (being $11,607.23 for RRRP and $904,809.97 for RPP).

**November 21, 2017 -** Anticipated end of day balances:

1) **Existing IESO-OFA $475M Revolving Credit Facility for RPP Program**: $12,649,081.37 advanced under the existing credit facility (with a new facility limit of $475M effective end of day);
2) **$2B OFA-IESO FHP Credit Facility**: Approximately $1.05 billion advanced under the FHP Credit Facility.

Best regards,

**Will Tan**| *Documentation & Analysis Specialist*
Capital Markets Division | Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3, CANADA
Tel. (416) 325-8090 | Fax: (416) 860-8346
william.tan@ofina.on.ca

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Carlos Yep |
| **Cc:** | Ken Kandeepan; James Devine; Mike Manning; Anna Strathy |
| **Subject:** | Interest Rate Sensitivities (2017 08 23)_v5.pptx |
| **Date:** | Wednesday, September 27, 2017 2:05:56 PM |
| **Attachments:** | Interest Rate Sensitivities (2017 08 23)_v5.pptx |

---

Hi Carlos,

Attached is the summary data we compiled from the mid-August data. Energy had indicated that it clearly wasn't the final version. I know Energy had referred recently to an August 30th version but they indicate that isn't the final version either.

I can send the raw file but I am just not sure how useful it would be.

Thanks,

John

# Interest Rate Scenarios: Energy LTEP Model

DRAFT

- The preliminary interest cost estimates are based on Ministry of Energy Global Adjustment cost amounts to be deferred consistent with LTEP modelling assumptions.
  - The sensitivities were modelled by assuming alternate interest rates and allowing term to differ from the status quo 30-year assumption.
  - There are other assumptions in the Energy model, such as the YOY increase after 2022, that could also be changed. The current analysis does not explore all scenarios.
  - GA deferral estimates are subject to updates from the Ministry of Energy.
  - Actual annual and cumulative interest costs are sensitive to actual borrowing rates.
  - Sensitivities shown on lower interest rates assume faster debt pay down.

2% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.648 billion in 2029 | $10.7 billion | $18.4 billion | 2042 (25-year term) |
| 4.0% | $0.777 billion in 2029 | $13.3 billion | $19.3 billion | 2043 (26-year term) |
| 4.5% | $0.918 billion in 2029 | $16.9 billion | $20.3 billion | 2045 (28-year term) |
| 5.0% | $1.076 billion in 2030 | $21.3 billion | $21.3 billion | 2047 (30-year term) |

3% inflation cap: 2018-2021

| Interest Rate | Peak Annual Interest Cost | Total Life-cycle Accumulated Interest Costs | Peak Debt | Term (Approximate) |
|---|---|---|---|---|
| 3.5% | $0.598 billion in 2029 | $9.8 billion | $17.0 billion | 2042 (25-year term) |
| 4.0% | $0.717 billion in 2029 | $12.1 billion | $17.8 billion | 2043 (26-year term) |
| 4.5% | $0.848 billion in 2029 | $15.4 billion | $18.7 billion | 2045 (28-year term) |
| 5.0% | $0.991 billion in 2030 | $19.4 billion | $19.7 billion | 2047 (30-year term) |

Note: Above tables provide interest rate sensitivity scenarios based on Energy's draft LTEP deck dated August 15, 2017 and are subject to change

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Gadi Mayman |
| **Cc:** | Mike Manning; Ronald Kwan; Anna Strathy |
| **Subject:** | Issues already decided |
| **Date:** | Tuesday, November 14, 2017 9:48:14 AM |

Hi Gadi

As discussed the following were already decided upon last Friday:

- The Province will accept the removal of the tax information requirements from the Process Agreement
- The Province will accept OPG's revisions to the program maximum requirements in the Process Agreement, as Malle suggested the briefing note to the two ministers will cover any potential risks to the Province from OPG setting the maximum as well as mitigation strategies.
- As very clearly explained by Cindy, the Province does not run the risk of large contingent liabilities in the Public Account's as a result of accepting OPG's revisions to the program maximum.
- In the interests of time the Indenture Trustee should be removed as a party to the Protection Agreement; this can be done by removing OPG's ability to issue US Debt which is now part of the Master Indenture Trust. Naturally OPG may have concerns however, these concerns should be alleviated by pointing out that the removal can be revisited, say one year hence.

Be useful if you can mention this at the start since we can address other outstanding issues.

Thanks

Ken k

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Tobias P. Whitfield (MOF) |
| **Subject:** | Meeting Forward Notification: Discussion regarding FHP issues |
| **Start:** | Monday, September 11, 2017 10:00:00 AM |
| **End:** | Monday, September 11, 2017 11:00:00 AM |
| **Location:** | Call (number to be circulated) |

---

Your meeting was forwarded

Mike Manning <mailto:/o=OFA/ou=OFINA%20Administrative%20Group/cn=Recipients/cn=mmanning> has forwarded your meeting request to additional people.

Meeting

Discussion regarding FHP issues

Meeting Time

Monday, September 11, 2017 10:00 AM - Monday, September 11, 2017 11:00 AM

Recipients

Gadi Mayman <mailto:/o=OFA/ou=OFINA%20Administrative%20Group/cn=Recipients/cn=gmayman>

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

———

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Tobias P. Whitfield (MOF) |
| **Subject:** | Meeting Forward Notification: Discussion regarding FHP issues |
| **Start:** | Monday, September 11, 2017 10:00:00 AM |
| **End:** | Monday, September 11, 2017 11:00:00 AM |
| **Location:** | Call (number to be circulated) |

---

Your meeting was forwarded

Mike Manning <mailto:/o=OFA/ou=OFINA%20Administrative%20Group/cn=Recipients/cn=mmanning> has forwarded your meeting request to additional people.

Meeting

Discussion regarding FHP issues

Meeting Time

Monday, September 11, 2017 10:00 AM - Monday, September 11, 2017 11:00 AM

Recipients

Ken Kandeepan <mailto:/o=OFA/ou=OFINA%20Administrative%20Group/cn=Recipients/cn=kkandeep>

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

———

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Scott Nelms (ENERGY) |
| **Cc:** | Gadi Mayman; Anna Strathy |
| **Subject:** | Meeting for Monday -3:00 at OFA |
| **Date:** | Saturday, September 16, 2017 7:21:51 AM |

---

Hi Scott:
OPG has asked for a meeting to follow up on the support discussion late last week. John Lee would like to elaborate on the term sheet to get something he can take to E&Y and after that take to his Board. A meeting has been hastily set up for Monday by OPG at 3:00 at the OFA and you may have been missed, although I'm sure we'd have got to you on Monday. It would be great if you could attend or call in. As you know, the time line is getting short and your participation would be very helpful. Lawyers from both sides will be attending and hoping we can make some good progress.
Regards, Mike

Sent from my iPad

**From:** Mike Manning
**To:** "LEE John -TREASURY"
**Subject:** Most recent provincial support agreement
**Date:** Thursday, September 07, 2017 9:02:46 AM
**Attachments:** Fair Hydro - August Term Sheet v1_SharedClean.doc

---

Hi John:

With the caveats we mentioned this morning.

Mike

**Change of Law Assumption Agreement**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Assumption Agreement:** | A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br><br>Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture]. |
| **Assumption Events:** | Any of the following would constitute an Assumption Event:<br><br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br><br>(2) the Legislature enacts or amends any other statute; |

| | |
|---|---|
| | (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | RYFA Ken -TREASURY; Scott Nelms (ENERGY) |
| **Subject:** | Most recent provincial support agreement |
| **Date:** | Wednesday, September 13, 2017 5:08:51 PM |

Mike:

Given your need to get something in front of the ministers for approval by Sept 26(?). I believe it would be helpful to have a working session with your lawyers and yourself to land on a version of the document that works for both sides and meets the accounting and commercial requirements for the transaction. A markup will be provided tomorrow which will reflect both external counsel and the dealers comments.

Let me know your thoughts on this approach.

John

**John Lee | Vice President Treasurer |**
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Mosley, Theresa |
| **Cc:** | Becker, Andrew; Brennan, Emma; Drewitt, Kyle; Headley, Andrew; Laing, Mark; McDonald, Greg; Mosley, Theresa; Pong, Brian; Scace, Patrick |
| **Subject:** | New Issue Price: Ontario Power Generation Inaugural 10 Year |
| **Date:** | Thursday, September 28, 2017 11:58:03 AM |

---

Issuer: Ontario Power Generation Inc. ("OPG" or the "Company")
Issue: Medium Term Notes issued pursuant to the short form base shelf prospectus dated September 12, 2017,
and a pricing supplement to be dated September 28, 2017 (the “Notes”)
Principal Amount: C$500 million
Settlement Date: October 2, 2017 (T+2)
Maturity Date: October 4, 2027
Issue Spread(1): +115bps vs. the interpolated Government of Canada curve (GoC 1.00% due June 1, 2027 and the GoC 5.75% due June 1, 2029)
+116.8bps (includes a 1.8 bps curve adjustment) vs. the GoC 1.00% due June 1, 2027 (priced at $90.04 to yield 2.147%)
Issue Yield: 3.315%
Coupon: 3.315% per annum, payable in equal semi-annual instalments in arrears on April 4 and October 4 in each year until maturity,
commencing April 4, 2018 (long first coupon)
Issue Price: $100.00 per $100.00 of principal amount of the Notes
Redemption: The Notes may be redeemed at any time prior to July 4, 2027, at the option of the Company, in whole or, from time to time, in part, on not
fewer than 15 nor more than 60 days' prior notice at a redemption price equal to the greater of (a) the Canada Yield Price of the Notes and (b) 100% of the principal amount thereof, in either case together with accrued and unpaid interest. The Notes may be redeemed at any time on or after July 4, 2027 at the option of the Company, in whole or, from time to time, in part, on not fewer than 15 nor more than 60 days’ prior notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest.
“Canada Yield Price" means a price equal to the price of the Notes calculated to provide a yield to July 4, 2027, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third business day preceding the date fixed for redemption, plus 0.285%.
"Government of Canada Yield" on any date means the yield from the date fixed for redemption to July 4, 2027, compounded semi-annually and
calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to July 4, 2027 (calculated from the redemption date) of the Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Company.
Ranking: The Notes will be direct unsecured obligations of the Company and will rank equally and pari passu with all other medium term notes issued and
outstanding from time to time under the Trust Indenture (regardless of their actual dates or terms of issue) and, subject to statutory preferred exceptions, with all other present and future unsubordinated and unsecured Indebtedness of the Company, except as to any sinking fund provisions applicable to different series of medium term notes and other types of obligations of the Company
Use of Proceeds: The net proceeds of the offering will be used for general corporate purposes and to finance a portion of OPG's debt investment in the Fair Hydro
Financing Entity associated with the Province of Ontario's Fair Hydro Plan

Credit Rating(2): A(low) by DBRS / BBB+ by S&P
CUSIP / ISIN: 68321ZAA9 / CA68321ZAA99
Syndicate: BMO/TD (Co-Leads & Joint-Bookrunners)
GS/CIBC/NBF/RBC/SC/HSBC/DESJ/LBS

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorities in each of the provinces of Canada. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed, is required to be delivered with this document.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

These securities have not been and will not be registered under the United States Securities Act of 1933, as amended, or any state securities laws and may not be offered, sold, or delivered within the United States of America and its territories and possessions except in certain transactions exempt from the registration requirements of such Act.

(1) The Issue Spread shows the basis point difference between the yield on the Notes and the yield on the specified Government of Canada ("GoC") benchmark bond(s) of similar maturity. The Issue Spread is the customary method for benchmarking yields on Canadian investment grade debt instruments issued in Canada. Information about the GoC benchmark bond(s) of similar maturity (including the yield) was obtained from public sources and has not been verified by the Company or any member of the syndicate. If the information concerning the GoC benchmark bond(s) (including the yield) used in calculating the Issue Spread contains a misrepresentation, investors do not have a remedy under securities legislation in any province of Canada. Investors are cautioned to not put undue reliance on the Issue Spread in making an investment decision.

(2) A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawn at any time.

**Theresa Mosley** | Associate | Debt Capital Markets | **TD Securities Inc.**

Ernst & Young Tower 7th Floor, 222 Bay Street, Toronto, ON M5K 1A2
**T: 416 944 5321** | theresa.mosley@tdsecurities.com

http://www.tdsecurities.com/tds/content/SalesTrading_Disclaimer?language=en_CA[tdsecurities.com]
http://www.tdsecurities.com/tds/content/SalesTrading_Disclaimer?language=fr_CA[tdsecurities.com]

If you wish to unsubscribe from receiving commercial electronic messages from TD Bank Group, please click here[td.com] or go to the following web address: www.td.com/tdoptout
Si vous souhaitez vous désabonner des messages électroniques de nature commerciale envoyés par Groupe Banque TD veuillez cliquer ici[td.com] ou vous rendre à l'adresse www.td.com/tddesab

NOTICE: Confidential message which may be privileged. Unauthorized use/disclosure prohibited. If received in error, please go to www.td.com/legal for instructions.
AVIS : Message confidentiel dont le contenu peut être privilégié. Utilisation/divulgation interdites sans permission. Si reçu par erreur, prière d'aller au www.td.com/francais/avis_juridique pour des instructions.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Gadi Mayman; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY) |
| **Subject:** | Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 7:04:44 AM |

---

OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.

Sent from my iPad

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new Rollover.
**Date:** Wednesday, October 18, 2017 2:45:33 PM

---

Loan has a new rollover that is now available for viewing. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new Rollover.
**Date:** Wednesday, September 20, 2017 10:09:30 AM

---

Loan has a new rollover that has been verified by settlements. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new Rollover.
**Date:** Wednesday, October 18, 2017 4:00:26 PM

---

Loan has a new rollover that has been verified by settlements. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new advance.
**Date:** Wednesday, October 18, 2017 1:48:46 PM

---

Loan has a new advance that is now available for viewing. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance, Advance Number: 8

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new advance.
**Date:** Tuesday, September 19, 2017 4:00:11 PM

---

Loan has a new advance that has been verified by settlements. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance

**From:** olms.ws@ofina.on.ca
**To:** OFA_Loans
**Subject:** OLMS: Loan has a new advance.
**Date:** Wednesday, October 18, 2017 2:14:13 PM

---

Loan has a new advance that has been verified by settlements. Loan Id:1275, Entity: Independent Electricity System Operator and Project: Regulated Price Plan Variance

| | |
|---|---|
| **From:** | Carlos Yep |
| **To:** | Mike Manning; James Devine; Ken Kandeepan; John Psinas; Gadi Mayman; Anna Strathy; Ronald Kwan; John Kim; Malle Hanslep (MOF) |
| **Subject:** | OPG $2B MTN shelf filing |
| **Date:** | Wednesday, September 06, 2017 10:20:36 AM |
| **Attachments:** | OPG Preliminary short form prospectus $2B SEDAR 1sep2017.pdf |

---

FYI – OPG has filed a $2B MTNs shelf.

Page 7-8 RECENT DEVELOPMENTS: Ontario Fair Hydro Plan

Page 28 USE OF PROCEEDS: The company expects that up to 300 million of the net proceeds from the sale of the Notes during the term of this prospectus may be used to finance portion of the Company's debt investment in the Financing Entities. See Recent Developments – Ontario Fair Hydro Plan

http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00012633

*No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise.*

*A copy of this preliminary short form base shelf prospectus has been filed with the securities regulatory authorities in each of the provinces of Canada but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary short form base shelf prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the short form base shelf prospectus is obtained from the securities regulatory authorities.*

*This short form prospectus has been filed under legislation in each of the provinces of Canada that permits certain information about these securities to be determined after this prospectus has become final and that permits the omission from this prospectus of that information. The legislation requires the delivery to purchasers of a prospectus supplement containing the omitted information within a specified period of time after agreeing to purchase any of these securities. All shelf information omitted from this shelf prospectus will be contained in one or more prospectus supplements that will be delivered to purchasers together with the base shelf prospectus.*

*This preliminary short form prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. The securities to be issued hereunder have not been and will not be registered under the United States Securities Act of 1933, as amended, or any state securities laws and may not be offered, sold or delivered within the United States of America and its territories and possessions except in certain transactions exempt from the registration requirements of such Act. See "Plan of Distribution".*

***Information has been incorporated by reference in this short form prospectus from documents filed with securities commissions or similar authorities in Canada**. Each shelf prospectus supplement will be incorporated by reference into this shelf prospectus for the purposes of securities legislation as of the date of the shelf prospectus supplement and only for the purposes of the distribution of the securities to which the shelf prospectus supplement pertains. Copies of the documents incorporated herein by reference may be obtained on request without charge from the Secretary of Ontario Power Generation Inc., 700 University Avenue, Toronto, Ontario, M5G 1X6, Canada, (416) 592-6700 and are also available electronically at www.sedar.com.*

**PRELIMINARY SHORT FORM BASE SHELF PROSPECTUS**

*New Issue* September 1, 2017

**ONTARIO POWER GENERATION INC.**
**$2,000,000,000**
**Medium Term Notes**
**(unsecured)**

Ontario Power Generation Inc. ("OPG" or the "Company") may offer and issue from time to time medium term notes (the "Notes") in an aggregate principal amount of up to $2,000,000,000 in Canadian currency (or the equivalent thereof in other currencies or currency units at the time of issue) during the twenty-five months from the date of issuance of the receipt for this short form prospectus.

The Notes will have a term to maturity of not less than one year and will be issuable in Canadian currency (or in other currencies or currency units) in fully registered definitive or global form, in which case the Notes will be exchangeable only under certain conditions for definitive Notes.

Notes issued hereunder will be direct unsecured obligations of the Company, will be issued under a trust indenture in any number of series or separate issues thereof, and will at their respective dates of issue rank *pari passu* with all other unsecured and unsubordinated Indebtedness (as defined below) of the Company then outstanding, except as to any sinking fund which pertains exclusively to any particular Indebtedness of the Company.

The specific variable terms of an offering of Notes (including the aggregate principal amount of the Notes being offered, the currency or currencies, the issue and delivery date, the form, the maturity date, the interest rate (either fixed or floating and, if floating, the manner of calculation thereof), the issue price, the interest payment date(s), any redemption or repayment provisions, any provisions entitling the Company to extend the maturity date of the Notes, the name(s) of the dealer(s) offering the Notes, the commission payable to such dealer(s), the method of distribution and the net proceeds to the Company) will be set forth in a prospectus supplement or pricing supplement which will accompany this short form prospectus. Unless otherwise indicated in a prospectus supplement or pricing supplement, the Notes will not be listed on any securities exchange.

This short form prospectus does not qualify the issuance of Notes: (i) entitling the holder to exchange or convert the Notes into securities issued by the Company or into securities issued by another entity; or (ii) in respect of which the payment of principal and/or interest may be determined, in whole or in part, by reference to one or more underlying interests including, for example, an equity or debt security, a statistical measure of economic or financial performance including, but not limited to, any currency, consumer price or mortgage index, or the price or value of one or more commodities, indices or other items, or any other item or formula, or any combination or basket of the foregoing items. For greater certainty, however, this short form prospectus does qualify for issuance Notes in respect of which the payment of principal and/or interest may be determined, in whole or in part, by reference to published rates of a central banking authority or one or more financial institutions, such as a prime rate or a bankers' acceptance rate, or to recognized market benchmark interest rates, such as CDOR, LIBOR or EURIBOR, or to interest rates on Government of Canada bonds.

The sole shareholder of the Company is the Province of Ontario (the "Province"). The Notes will not be obligations of, and will not be guaranteed in any manner by, the Province.

**Investing in the Notes involves risks. See "Risk Factors" in this short form prospectus, which may be amended or supplemented in any prospectus supplement or pricing supplement.**

**Unless otherwise indicated in a prospectus supplement or pricing supplement, there is no market through which these securities may be sold and purchasers may not be able to resell securities purchased under this short form prospectus. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See "Risk Factors".**

Certain directors of the Company reside outside of Canada. Each such director has appointed the Company as his/her agent for service of process in Canada. Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process. See "Agent for Service of Process in Canada".

## RATES ON APPLICATION

The Notes may be offered severally by one or more of BMO Nesbitt Burns Inc., TD Securities Inc., Goldman Sachs Canada Inc., CIBC World Markets Inc., Desjardins Securities Inc., HSBC Securities (Canada) Inc., Laurentian Bank Securities Inc., National Bank Financial Inc., RBC Dominion Securities Inc. and Scotia Capital Inc. pursuant to the dealer agreement referred to under the heading "Plan of Distribution" or such other dealers as may be selected from time to time by the Company (the "Dealers"), in each case acting as agent of the Company or as principal. Where the Notes are offered by the Dealers as agent, the commissions payable in connection with sales of such Notes shall be agreed from time to time between the Company and any such Dealers. Where the Notes are purchased by the Dealers as principal, the Notes shall be purchased at such prices and with such commissions as may be agreed from time to time between the Company and any such Dealer(s) for resale to the public at prices to be negotiated with each purchaser. Such resale prices may vary during the distribution period and as between purchasers. In each case, the commissions payable, if any, will be set forth in a prospectus supplement or pricing supplement that will accompany and be incorporated by reference in this short form prospectus. Each Dealer's compensation will increase or decrease by the amount by which the aggregate price paid for Notes by purchasers exceeds or is less than the price paid by the Dealer, acting as principal, to the Company. The Company may also offer the Notes directly to potential purchasers pursuant to applicable statutory exemptions at prices and upon terms negotiated between the purchaser and the Company.

Certain of the Dealers may be subsidiaries or affiliates of lenders to the Company or its subsidiaries, now or in the future. Details of any relevant connected issuer considerations will be included in a prospectus supplement or pricing supplement if applicable to any offering of Notes. See "Plan of Distribution".

The offering of Notes is subject to the approval of certain legal matters on behalf of the Company by Torys LLP and on behalf of the Dealers by Blake, Cassels & Graydon LLP.

The Company's head and registered office is located at 700 University Avenue, Toronto, Ontario, M5G 1X6, Canada.

The Company's consolidated financial statements incorporated by reference in this short form prospectus have been prepared in accordance with U.S. generally accepted accounting principles. Unless otherwise specified or the context otherwise requires, all references herein to currency are references to Canadian dollars.

## TABLE OF CONTENTS

**Page**


DOCUMENTS INCORPORATED BY REFERENCE....4
CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION....5
THE COMPANY....6
RECENT DEVELOPMENTS....7
CREDIT RATINGS....8
ELIGIBILITY FOR INVESTMENT....8
EARNINGS COVERAGE RATIOS....9
DESCRIPTION OF THE NOTES....9
PLAN OF DISTRIBUTION....26
USE OF PROCEEDS....28
PRIOR SALES....28
CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS....28
RISK FACTORS....32
LEGAL MATTERS....35
AUDITORS, REGISTRAR AND TRANSFER AGENT....35
PURCHASERS' STATUTORY AND CONTRACTUAL RIGHTS....35
AGENT FOR SERVICE OF PROCESS IN CANADA....35
CERTIFICATE OF ONTARIO POWER GENERATION INC. ....C-1
CERTIFICATE OF DEALERS....C-2


## DOCUMENTS INCORPORATED BY REFERENCE

The following documents, which have been filed with the securities commission or similar regulatory authority in each of the provinces of Canada, are specifically incorporated by reference in this short form prospectus:

(a) the annual information form of the Company dated March 10, 2017 (the "AIF");

(b) the comparative audited consolidated financial statements of the Company, and the notes thereto, as at and for the fiscal years ended December 31, 2016 and 2015, together with the report of the auditors thereon dated March 10, 2017;

(c) management's discussion and analysis ("MD&A") for the year ended December 31, 2016;

(d) the statement of executive compensation for the year ended December 31, 2016; and

(e) the unaudited consolidated financial statements of the Company, and the notes thereto, as at June 30, 2017 and for the three and six month periods ended June 30, 2017 and June 30, 2016 together with MD&A for those periods.

Updated earnings coverage ratios, as required, will be filed quarterly with the appropriate securities regulatory authorities either as prospectus supplements or as part of the Company's unaudited interim and audited annual consolidated financial statements and will be deemed to be incorporated by reference into this short form prospectus for the purposes of the offering of Notes hereunder.

Any documents of the type required by National Instrument 44-101 – *Short Form Prospectus Distributions* to be incorporated by reference in a short form prospectus, including documents of the types

referred to in paragraphs (a) through (e) above, any material change reports (except confidential material change reports), and any business acquisition reports filed by the Company with the securities regulatory authorities in Canada since the end of the financial year in respect of which its then current annual information form is filed, shall be deemed to be incorporated by reference into this short form prospectus. Upon a new annual information form, new statement of executive compensation and new annual financial statements and the related MD&A being filed by the Company with, and where required, accepted by, the applicable securities regulatory authorities during the currency of this short form prospectus, the previous annual information form, the previous statement of executive compensation, the previous annual financial statements and the related MD&A, and all previous interim financial statements and the related MD&A filed prior to the commencement of the Company's financial year in which the new documents are filed shall be deemed no longer to be incorporated into this short form prospectus for purposes of future offers and sales of Notes hereunder.

A pricing supplement or prospectus supplement containing the specific variable terms for an issue of Notes will be delivered to purchasers of such Notes together with this short form prospectus and will be deemed to be incorporated by reference into this short form prospectus as of the date of the pricing supplement or prospectus supplement, solely for the purposes of the Notes issued under that pricing supplement or prospectus supplement. Any template version of marketing materials for an issue of Notes filed by the Company with the securities regulatory authorities in Canada after the date of the pricing supplement or prospectus supplement in respect of such issue of Notes and before the termination of the distribution of such Notes will be deemed to be incorporated by reference into that pricing supplement or prospectus supplement.

**Any statement contained in this short form prospectus or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded and not incorporated by reference, for purposes of this short form prospectus, to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document that it modifies or supersedes. The making of a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of this short form prospectus, except as so modified or superseded.**

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION

This short form prospectus, including the documents incorporated by reference herein, contains "forward-looking information" within the meaning of applicable Canadian securities laws that is based on current expectations, estimates, forecasts and projections about the business of the Company and the industry in which the Company operates and includes beliefs and assumptions made by the management of the Company. Such information includes, but is not limited to, statements about the general development of the Company's business, the Company's strategy, future capital expenditures, and expectations regarding developments in the statutory and operating framework for electricity generation and sale in Ontario. Additional forward-looking information is identified in the various documents incorporated by reference in this short form prospectus, including the section entitled "Forward-Looking Information" in the Company's annual information form and the section entitled "Forward-Looking Statements" in the Company's MD&A. The Company generally uses words such as "anticipate", "believe", "foresee", "forecast", "estimate", "expect", "schedule", "intend", "plan", "project", "seek",

"target", "goal", "strategy", "may", "will", "should", "could", and other similar words and expressions to indicate forward-looking statements. The absence of any such word or expression does not indicate that a statement is not forward-looking. The forward-looking information contained in this short form prospectus, including the documents incorporated by reference herein, are not guarantees of future performance and involve inherent assumptions and risks and uncertainties that are difficult to predict. All forward-looking statements could be inaccurate to a material degree. In particular, the forward-looking information contained in this short form prospectus is based on a variety of factors and assumptions including, OPG's generating station performance and availability, fuel costs, surplus baseload generation, cost of fixed asset removal and nuclear waste management, performance and earnings of investment funds, refurbishment of existing facilities, development and construction of new facilities, pension and other post-employment benefit obligations and funds, income taxes, proposed new legislation, the ongoing evolution of Ontario's electricity industry, environmental and other regulatory requirements, health, safety and environmental developments, business continuity events, the weather, financing and liquidity, applications to the Ontario Energy Board ("OEB") for regulatory prices, the impact of regulatory decisions by the OEB, operations, maintenance and administration expenditures, retention of critical talent, supplier and third party performance, and forecasts of earnings, cash flows, Funds from Operations Adjusted Interest Coverage, Return on Common Equity Excluding Accumulated Other Comprehensive Income, Total Generating Cost and capital expenditures. Actual outcomes and results may differ materially from what is expressed, implied or forecasted in this forward-looking information. While the Company does not know what impact any of these differences may have, the Company's business, results of operations, financial condition and credit stability may be materially adversely affected. Factors that could cause actual results or outcomes to differ materially from the results expressed or implied by forward-looking information are discussed in more detail under "Risk Factors" in this short form prospectus and in any prospectus supplement or pricing supplement and in the sections entitled "Forward-Looking Information" and "Risk Factors" in the Company's annual information form and the sections entitled "Risk Management" and "Forward-Looking Statements" in the Company's MD&A. You should carefully consider these and other factors and not place undue reliance on forward-looking information.

The forward-looking information included in this short form prospectus and in the documents incorporated by reference represent the Company's views as of the date of this short form prospectus or the relevant document incorporated by reference herein, as applicable, and should not be relied upon as representing the Company's views as of any subsequent date. The Company has no intention and undertakes no obligation to update or revise any forward-looking information as a result of new information, future events or otherwise, except as required by law.

## THE COMPANY

OPG is an Ontario-based electricity generation company whose principal business is the generation and sale of electricity in Ontario. OPG was established under the *Business Corporations Act* (Ontario) and is wholly-owned by the Province.

OPG is Ontario's largest clean energy generator. As at June 30, 2017, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power turbine. In addition, OPG and TransCanada Energy Ltd. co-own the 550 MW Portlands Energy Centre ("PEC") gas-fired combined cycle generating station. OPG and ATCO Power Canada Ltd. co-own the 560 MW Brighton Beach gas-fired combined cycle generating station ("Brighton Beach"). Including its share of the co-owned facilities, OPG's total in-service generating capacity was 16,210 MW as at June 30, 2017, which represented approximately 45 percent of installed generation capacity in Ontario's electricity grid as reported by the Independent Electricity System Operator ("IESO"). OPG's in-service generating capacity as of June 30, 2017 excludes Unit 2 of the Darlington Nuclear Generating Station.

This unit, which has a generating capacity of 878 MW, was taken offline in mid-October 2016 and is currently undergoing refurbishment. OPG operates under an electricity generation licence issued by the OEB, which is valid until October 30, 2023. OPG expects the licence to be renewed in the future.

OPG also owns two other nuclear generating stations, the Bruce A Nuclear Generating Station and the Bruce B Nuclear Generating Station, which are leased on a long-term basis to Bruce Power LP and are not included in the generation and other operating statistics contained and incorporated by reference in this short form prospectus. A description of OPG's segments is provided in OPG's 2016 annual MD&A in the section, "Business Segments".

All of OPG's owned and co-owned generating facilities are located in Ontario. OPG does not operate PEC, Brighton Beach, the Bruce A Nuclear Generating Station and the Bruce B Nuclear Generating Station.

The address of the head and registered office of the Company is 700 University Avenue, Toronto, Ontario, M5G 1X6, Canada.

## RECENT DEVELOPMENTS

### Ontario Fair Hydro Plan

In June 2017, the Ontario government passed the *Ontario Fair Hydro Plan Act, 2017* (the "FHPA"), legislation that permits the refinancing of certain electricity infrastructure costs and provides immediate rate relief to consumers. Under the FHPA, OPG is appointed as financial services manager and is given the authority to, among other things, establish and manage one or more financing entities (the "Financing Entities") to raise debt financing for the purposes of the FHPA (such debt, the "FHPA Debt"). Subject to the terms of the FHPA, the FHPA Debt is ultimately recoverable through amounts charged to electricity consumers. OPG will control the Financing Entities and will provide management and financial services to the Financing Entities to implement the financing plan. The Province has agreed to indemnify the Company, its subsidiaries (other than any Financing Entities) and each of their directors, officers and employees in respect of losses arising directly or indirectly from its activities with respect to the implementation of or relating to the FHPA (subject to limited exceptions, including losses arising as a result of dishonesty, gross negligence or wilful misconduct).

In addition, it is expected that OPG will acquire a portion of the FHPA Debt, which is anticipated to consist of subordinated debt. A significant portion of the Company's investments in the FHPA Debt are expected to be funded through equity investments in OPG by the Province, with a portion of the investments to be funded from the Company's available funds, including all or a portion of the proceeds of any offerings of Notes. See "Use of Proceeds".

Under section 53.1 of the *Electricity Act, 1998*, as amended by the FHPA, regardless of whether a Financing Entity is or is not a subsidiary of OPG:

(a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and

(b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity.

The Financing Entities will not be Designated Subsidiaries of the Company subject to the Trust Indenture provisions, and their assets and liabilities will be excluded for the purposes of definitions and calculations under the Trust Indenture. None of the Company, its subsidiaries, the Trustee or any holder of Notes will have any recourse whatsoever against any Financing Entity or the assets of any Financing Entity, provided that, for clarity, the foregoing will not affect any of the Company's or its subsidiaries' rights and remedies as a holder of FHPA Debt in accordance with the provisions of that indebtedness. See "Description of the Notes - Limitations Regarding Fair Hydro Plan Financing Entities".

## CREDIT RATINGS

As of the date of this short form prospectus, Standard & Poor's Ratings Service ("S&P") and DBRS Limited ("DBRS") have each assigned long-term debt ratings of "BBB+" and "A (low)", in respect of the Company.

Credit ratings are intended to provide investors with an independent measure of the credit quality of an issue of securities. The rating agencies rate long-term debt instruments by rating categories ranging from a high of AAA to a low of D. Long-term debt instruments which are rated in the BBB category by S&P are in the fourth highest category and exhibit adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to weaken the obligor's capacity to meet its financial commitments on the obligation. S&P may modify the ratings from AA to CCC using a plus (+) or minus (-) sign to show relative standing within the major rating categories. Long-term debt instruments which are rated in the A category by DBRS are in the third highest category and are considered to be of a good credit quality, with substantial capacity for the payment of financial obligations. Entities in the A category are considered to be vulnerable to future events, but qualifying negative factors are considered manageable. The "low" modifier indicates relative standing within this rating category by DBRS. In some circumstances, no rating may be assigned to a drawdown, and if a definitive rating is issued, it may differ from the provisional rating.

The ratings mentioned above are not a recommendation to purchase, sell or hold the Company's debt securities including the Notes and do not comment as to market price or suitability for a particular investor. There can be no assurance that the ratings will remain in effect for any given period of time or that the ratings will not be revised or withdrawn entirely by any or all of S&P and DBRS at any time in the future if in their judgment circumstances so warrant.

The Company has made, and anticipates making, payments to each of S&P and DBRS pursuant to the ratings agency services agreements entered into with such credit rating organizations with respect to the ratings assigned to the long-term debt of the Company. In addition, as Notes are issued, the Company expects to make payments to such credit rating organizations pursuant to the ratings agency services agreements entered into with such credit rating organizations for the ratings they assign to the Notes of a particular series. The Company has also made payments to S&P for evaluation services in connection with potential changes in the Company's capital structure. There have been no other services provided by any of such credit rating organizations to the Company within the last two years.

## ELIGIBILITY FOR INVESTMENT

In the opinion of Torys LLP, counsel to the Company, and Blake, Cassels & Graydon LLP, counsel to the Dealers, unless otherwise specified in the applicable prospectus supplement or pricing supplement, the Notes, if issued on the date hereof, would be qualified investments under the *Income Tax Act* (Canada) and the regulations thereunder (collectively, the "Tax Act") for a trust governed by a registered retirement savings plan ("RRSP"), registered retirement income fund ("RRIF"), registered education savings plan ("RESP"), registered disability savings plan ("RDSP"), deferred profit sharing

plan (other than a trust governed by a deferred profit sharing plan for which any employer is the Company or an employer who does not deal with the Company at arm's length for purposes of the *Tax Act*) or a tax-free savings account ("TFSA").

The Notes will not be a "prohibited investment" (within the meaning of the *Tax Act*) for a TFSA, RRSP or RRIF, provided that the holder of the TFSA or the annuitant of the RRSP or RRIF, (i) deals at arm's length with the Company for purposes of the Tax Act, and (ii) does not have a "significant interest" (within the meaning of the *Tax Act*) in the Company. On March 22, 2017, the Minister of Finance (Canada) announced proposed amendments to the *Tax Act* that would extend the prohibited investment rules to RESPs and RDSPs effective after March 22, 2017. Individuals who hold or intend to hold the Notes in a RRSP, RRIF, RESP, RDSP or TFSA should consult their own tax advisors regarding the application of the foregoing prohibited investment rules in their particular circumstances.

## EARNINGS COVERAGE RATIOS

For the twelve months ended December 31, 2016 and the twelve months ended June 30, 2017, the Company's consolidated income before income taxes, interest expense (net of capitalized interest) and non-controlling interest was $761 million and $875 million, respectively. Interest expense (net of capitalized interest) for these periods was $157 million and $137 million, respectively, and including capitalized interest, was $298 million and $295 million, respectively.

The following table sets forth the earnings coverage ratios for the Company for the twelve month period ended December 31, 2016, based on audited information, and for the twelve month period ended June 30, 2017, based on unaudited information, in each case without giving effect to any Notes to be issued under this short form prospectus:

| | **December 31, 2016** | **June 30, 2017** |
|---|---|---|
| Earnings coverage on long-term debt obligations[(1)] | 2.5 | 2.9 |

(1) The earnings coverage ratios have been calculated as the sum of net income attributable to the shareholder of the Company, income tax expenses and interest expense (net of capitalized interest) divided by the sum of interest expense including capitalized interest after giving effect to a series of debt issuances totalling $400 million and a series of repayments totalling $251 million, as if such amounts had been issued and repaid, respectively, at the beginning of each respective twelve month period. For the twelve months ended December 31, 2016 and the twelve months ended June 30, 2017, the Company's interest expense including capitalized interest after giving effect to such adjustments was $301 million and $299 million, respectively.

## DESCRIPTION OF THE NOTES

### General

The following is a summary of the material attributes and characteristics of the Notes, and does not purport to be complete and is qualified in its entirety by reference to the Notes and the Trust Indenture (as defined below).

The terms and conditions set forth in this section "Description of the Notes" will apply to each Note unless otherwise specified in the applicable prospectus supplement or pricing supplement. The Company reserves the right to set forth in a prospectus supplement or pricing supplement specific variable terms of or amendments to the Notes which are not within the options and parameters set forth in this short form prospectus. References in this section "Description of the Notes" refer to all medium term notes of the Company which have previously been or are to be issued under the Trust Indenture.

This short form prospectus qualifies under applicable Canadian securities laws the distribution of $2,000,000,000 aggregate principal amount of Notes in Canadian currency (or the equivalent thereof in other currencies or currency units at the time of issue) which have been authorized for issue under the Trust Indenture. This amount is subject to amendment from time to time as determined by the Company.

Notes issued hereunder will have a term to maturity of not less than one year and will be issuable in Canadian currency (or in other currencies or currency units at the time of issue) in fully registered definitive or global form, in which case the Notes will be exchangeable only under certain conditions for definitive Notes (as described under the heading "Global Notes" below). Each interest-bearing Note will bear interest at either a fixed rate (a "Fixed Rate Note") or a floating rate (a "Floating Rate Note"). Notes will be issued from time to time at such rates of interest and at par, at a premium or at a discount, may be subject to redemption or repayment prior to maturity, or may include terms entitling the Company to extend the maturity dates of the Notes, which terms shall be determined by the Company based on a number of factors, including advice from the Dealers. The Notes will be unsecured and will, at their respective dates of issue, rank *pari passu* with all other unsecured and unsubordinated Indebtedness and obligations of the Company then outstanding, except as to any sinking fund which pertains exclusively to any particular Indebtedness of the Company. The Company may also, from time to time, issue debt securities and incur additional debt otherwise than through the issuance of Notes pursuant to this short form prospectus.

Neither the aggregate principal amount of Notes which will be issued and sold nor the issue price to the public of the Notes has been established as the Notes will be issued at such times, in such amounts and at such prices as the Company determines from time to time. Notes issued hereunder will be offered and sold during the twenty-five months from the date of issuance of the receipt for this short form prospectus at prices negotiated with the purchasers, and the prices at which the Notes will be offered and sold may vary as between purchasers and during the distribution period. The Notes will be issued from time to time at the discretion of the Company in an aggregate principal amount not to exceed $2,000,000,000 in Canadian currency, or the equivalent thereof calculated at the applicable rates of exchange prevailing at the time of issue of Notes issued in currencies other than Canadian currency.

The specific variable terms of any offering of Notes, including, in the case of Floating Rate Notes, the information necessary for the calculation of interest thereon, will be set forth in a prospectus supplement or pricing supplement to this short form prospectus. Where Notes are offered and sold in currencies other than Canadian dollars, the Canadian dollar equivalent of the offering price and the rate of exchange at the last feasible date will be included in the applicable prospectus supplement or pricing supplement.

**Trust Indenture**

The Notes will be issued under a trust indenture dated as of ■, 2017, as supplemented or modified from time to time (collectively, the "Trust Indenture") between the Company and BNY Trust Company of Canada, as trustee (the "Trustee", which term shall include, unless the context otherwise requires, its successors and assigns). The following is a brief summary of the material attributes and characteristics of the Trust Indenture. This summary does not purport to be complete and reference should be made to the Trust Indenture for more detailed information.

The Trust Indenture permits the issuance from time to time of additional unsecured medium term notes without limitation as to aggregate principal amount, subject to compliance with the covenants contained therein.

The Notes will be direct obligations of the Company and will rank *pari passu* with all other medium term notes from time to time issued and outstanding under the Trust Indenture and with other present and future unsubordinated and unsecured Indebtedness of the Company, except as to any sinking fund which pertains exclusively to any particular Indebtedness of the Company. The Notes will not be secured by any mortgage, pledge or charge, except in the circumstances referred to under the subheading "Negative Pledge".

Negative Pledge

The Trust Indenture contains provisions to the effect that the Company will not, and will not permit any Designated Subsidiary (as defined below) to, create or permit to subsist any Security Interest (as defined below) to secure any Indebtedness (as defined below) without contemporaneously providing to the Trustee a ratable and *pari passu* Security Interest in the same collateral. This covenant is, however, subject to the following exceptions:

- any Security Interest that secures an obligation of a Designated Subsidiary which exists prior to the date on which it becomes a Designated Subsidiary and which (a) was not incurred in contemplation of such person becoming a Designated Subsidiary and (b) is not applicable to the Company or any other Designated Subsidiary or the properties or assets of the Company or any other Designated Subsidiary;

- any Purchase Money Mortgage (as defined below) or Capital Lease Obligation (as defined below) of the Company or a Designated Subsidiary;

- any Security Interest in an asset, or in the Company's or a Designated Subsidiary's equity or debt interest in, the person holding such asset, created or assumed by the Company or a Designated Subsidiary to secure Non-Recourse Debt (as defined below) of the Company or the Designated Subsidiary in respect of such asset;

- any Security Interest created or assumed by the Company or a Designated Subsidiary to or in favour of a bank or other lending institution to secure indebtedness of the Company or the Designated Subsidiary that is payable on demand or that, on the date of issue or assumption of liability, has a term to maturity (including any right of extension or renewal) of 18 months or less and that is incurred by the Company or the Designated Subsidiary in the ordinary course of business and for the purpose of carrying on the same;

- any Security Interest granted by a Designated Subsidiary in favour of the Company or any wholly-owned Designated Subsidiary;

- any Security Interest in cash or marketable debt securities pledged to secure non-speculative Financial Instrument Obligations (as defined below) incurred in the ordinary course of business for risk management purposes that hedge Indebtedness of the Company or a Designated Subsidiary;

- any Security Interest in an asset acquired by the Company or a Designated Subsidiary that secures obligations of any other person, whether or not such obligations are assumed by the Company or the Designated Subsidiary, provided that the Security Interest exists before the asset is acquired by the Company or the Designated Subsidiary and was not created or assumed in contemplation or as a result of the asset being acquired by the Company or the Designated Subsidiary;

- any Security Interest in cash or marketable debt securities in a sinking fund account established by the Company for a series of notes under the Trust Indenture;

- any Security Interest or right of distress reserved in or exercisable under any lease for rent to which the Company or a Designated Subsidiary is a party and for compliance with the terms of that lease;

- any Security Interest given to an issuing bank to secure letters of credit issued to the IESO in order to comply with IESO's prudential requirements;

- a lien or deposit under workers' compensation, social security or similar legislation or good faith deposits in connection with bids, tenders, leases, contracts or expropriation proceedings, or deposits to secure public or statutory obligations or deposits of cash or obligations to secure surety and appeal bonds;

- any lien or privilege imposed by law, such as builders', carriers', warehousemen's, landlords', mechanics' and material men's liens and privileges, and any lien or privilege arising out of judgments or awards with respect to which the Company or a Designated Subsidiary at the time is prosecuting an appeal or proceedings for review and with respect to which it has secured a stay of execution pending that appeal or proceedings for review; or any liens for taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Company or a Designated Subsidiary in good faith; or undetermined or inchoate lien privileges and charges incidental to current operations which have not at such time been filed pursuant to law against the Company or a Designated Subsidiary or which relate to obligations not due or delinquent; or the deposit of cash or securities in connection with any lien or privilege referred to in this clause;

- any minor encumbrance, such as easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other persons, rights-of-way for sewers, electric lines, telegraph and telephone lines, oil and natural gas pipelines and other similar purposes, or zoning or other restrictions as to the Company's use of real property, which do not in the aggregate materially detract from the value of that property or materially impair its use in the operation of the business of the Company or a Designated Subsidiary;

- any right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant or permit acquired by the Company or a Designated Subsidiary, or by any statutory provision to terminate any such lease, license, franchise, grant or permit or to purchase assets used in connection with or require annual or other periodic payments as a condition to the continuance thereof;

- any Security Interest granted by the Company or a Designated Subsidiary to (i) a public utility or any Governmental Authority when required by that utility or Governmental Authority, or (ii) any other person as required or imposed by Applicable Law, in each case in connection with the operations of the Company or a Designated Subsidiary;

- any reservation, limitation, proviso or condition, if any, expressed in any original grants to the Company or a Designated Subsidiary from the Crown;

- any Security Interest granted by the Company and/or its Designated Subsidiaries in connection with their respective obligations pursuant to the Ontario Nuclear Funds

Agreement (as defined below), provided that such Security Interest is limited to the interests of the Company and its Designated Subsidiaries, if any, in the segregated funds and/or trust funds (including the proceeds thereof) established pursuant to that agreement or Applicable Law to fund used nuclear fuel and/or other nuclear waste management and/or decommissioning costs;

- any Security Interest in IESO receivables granted in connection with an absolute assignment thereof in a securitization transaction and the proceeds thereof;

- Security Interests securing appeal bonds or other similar Security Interests arising in connection with contracts, bids, tenders or court proceedings, including, without limitation, surety bonds, security for costs of litigation where required by law and letters of credit, or any other instruments serving a similar purpose;

- any other Security Interest created or assumed by the Company or a Designated Subsidiary (in addition to the Security Interests referred to in the paragraphs above) if, after giving effect to the Security Interest, the aggregate amount of all Indebtedness secured by Security Interests permitted by this paragraph only does not at that time exceed 5% of Consolidated Net Worth (as defined below); and

- any extension, renewal, alteration, substitution or replacement, in whole or in part, of a Security Interest referred to in the paragraphs above, provided that the Security Interest is limited to all or part of the same assets (and the proceeds thereof), and the principal amount of the secured obligations, where limited by the foregoing provisions, is not increased by that action to an amount in excess of such limit (except to the extent of any fees, expenses and premiums incurred to discharge such secured obligations).

Limitation on Funded Indebtedness

So long as any of the Notes issued under the Trust Indenture remain outstanding, the Company will not, and will not permit any Designated Subsidiary to, directly or indirectly, issue, incur, assume or otherwise become liable for or in respect of any Funded Indebtedness (as defined below) unless, after giving effect thereto (including the application of the net proceeds thereof), Consolidated Funded Indebtedness (as defined below) would not exceed 75% of Total Consolidated Capitalization (as defined below).

Designation of Subsidiaries as Designated Subsidiaries

The Company may designate a subsidiary of the Company as a Designated Subsidiary provided that:

- none of the shares or ownership interests of the subsidiary are owned by a subsidiary that is not itself a Designated Subsidiary;

- at the time of and after giving effect to the designation, no Event of Default or event that, with the passing of time or the giving of notice or both, would constitute an Event of Default has occurred and is continuing; and

- after giving effect to the designation, the Company would be entitled to issue Funded Indebtedness in the principal amount of at least $1.00.

For greater certainty, no Financing Entity may be a Designated Subsidiary.

The Company may de-designate a Designated Subsidiary from time to time, provided that:

- no Funded Indebtedness of the Company or any other Designated Subsidiary is owed to such Designated Subsidiary and such Designated Subsidiary does not own any ownership interests in any other Designated Subsidiary;

- at the time of and after giving effect to the de-designation, an Event of Default or event that, with the passing of time or the giving of notice or both, would constitute an Event of Default has occurred and is continuing; or

- if, after giving effect to such de-designation, the Company would not be entitled to issue Funded Indebtedness in the principal amount of at least $1.00.

Mergers, Consolidations and Sales of Assets

The Company will not, directly or indirectly through a Designated Subsidiary, enter into a transaction or series of related transactions in which all or substantially all of the undertaking, property and assets of the Company and its Designated Subsidiaries on a consolidated basis would become the property of any person (other than the Company and/or its Designated Subsidiaries), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or otherwise (provided that, for clarity, the assets and liabilities of any Financing Entity shall not be considered for purposes of such consolidation), unless:

- the Company shall be the surviving person, or the person, if other than the Company, formed by the amalgamation, consolidation or into which the Company is merged or that acquires all or substantially all of the property or assets of the Company and its Designated Subsidiaries, shall be a person organized and validly existing under the federal laws of Canada or any of its provinces or territories and shall expressly assume, by a supplemental indenture executed and delivered to the Trustee in form satisfactory to the Trustee, all of the Company's obligations under the Trust Indenture and all Notes;

- at the time of and immediately after giving effect to the transaction or series of related transactions, no Event of Default (as defined below) or event that, with the passing of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and is continuing;

- neither the Company nor the person, if other than the Company, formed by the amalgamation, consolidation or into which the Company is merged or that acquires all or substantially all of the property or assets of the Company and its Designated Subsidiaries, either at the time of or immediately after the consummation of any such transaction or series of related transactions and after giving full effect thereto, or immediately after compliance with the foregoing provisions, will be insolvent or generally fail to meet, or admit in writing its inability or unwillingness to meet, its obligations as they generally become due; and

- the Company shall have delivered to the Trustee an opinion of the Company's counsel (as to matters customarily addressed by counsel) and an officers' certificate stating that the foregoing conditions precedent have been satisfied,

provided that the foregoing shall, to the extent they would otherwise have applied, not in any way limit or prevent the Company and/or its Designated Subsidiaries from entering into, and the Company and/or its Designated Subsidiaries shall be entitled to enter into, any transaction or series of related transactions which result in either or both of the following:

(1) All or substantially all of the hydro-electric generating stations and related assets of the Company and its Designated Subsidiaries becoming the property of any other person (a "successor"), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or otherwise, provided that:

(a) the successor is a person formed or organized and existing under the laws of Canada or a province or territory thereof and expressly assumes, by a supplemental indenture satisfactory in form to the Trustee and its counsel and executed and delivered to the Trustee, all of the covenants and obligations of the Company under the Trust Indenture and all Notes;

(b) after giving effect to the transaction or series of related transactions (x) the credit rating obtained by the successor from at least two of the designated rating agencies is not below the credit rating of the Company from such designated rating agencies prior to the transaction or series of related transactions, and (y) Consolidated Funded Indebtedness of the successor and its Designated Subsidiaries would not exceed 75% of Total Consolidated Capitalization for the successor and its Designated Subsidiaries;

(c) at the time of and, immediately after giving effect to the transaction or series of related transactions, no Event of Default or event that, with the passing of time or the giving of notice or both, would constitute an Event of Default has occurred and is continuing;

(d) the liabilities of the Company assumed by the successor do not include any liabilities of the Company related to decommissioning of OPG's nuclear generating stations, used nuclear fuel waste management or other nuclear waste management;

(e) neither the Company nor the successor, either at the time of or immediately after the consummation of any transaction or series of related transactions and after giving full effect thereto, or immediately after compliance by the person with the foregoing provisions, will be insolvent or generally fail to meet, or admit in writing its inability or unwillingness to meet, its obligations as they generally become due; and

(f) the Company shall have delivered to the Trustee an opinion of the Company's counsel (as to matters customarily addressed by counsel) and a officers' certificate stating that the foregoing conditions precedent have been satisfied.

For greater certainty, as part of such transaction or series of related transactions, the Company and its Designated Subsidiaries shall have the right, at their discretion, to either retain or transfer to the successor any non-nuclear generation assets or non-hydro-electric generation assets of the Company and its Designated Subsidiaries.

Following completion of such transaction or series of related transactions, and compliance with the foregoing conditions, the Company and its Designated Subsidiaries shall be released of all obligations under the Trust Indenture and all Notes.

(2) All or substantially all of the assets related to the (w) Darlington Nuclear Generating Station, and/or (x) the Pickering Nuclear Generating Stations and/or (y) the Bruce Nuclear Generating Stations, and/or (z) used nuclear fuel waste management and/or other nuclear waste management and/or decommissioning, in each case which are owned by the Company or its Designated Subsidiaries becoming the property of any other person or persons (each, a "NuclearCo"), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or otherwise, provided that:

(a) after giving effect to the transaction or series of related transactions Consolidated Funded Indebtedness of the Company and its Designated Subsidiaries would not exceed 75% of Total Consolidated Capitalization of the Company and its Designated Subsidiaries;

(b) after giving effect to the transaction or series of related transactions, the credit rating of the Company from at least two of the designated rating agencies is not below the credit rating of the Company from such designated rating agencies prior to the transaction or series of related transactions;

(c) at the time of and, immediately after giving effect to the transaction or series of related transactions, no Event of Default or event that, with the passing of time or the giving of notice or both, would constitute an Event of Default has occurred and is continuing;

(d) the Company will not, either at the time of or immediately after the consummation of any such transaction or series of related transactions and after giving full effect thereto, or immediately after compliance with the foregoing provisions, be insolvent or generally fail to meet, or admit in writing its inability or unwillingness to meet, its obligations as they generally become due;

(e) if an asset disposition as described in paragraph (2)(w), paragraph (2)(x) or paragraph (2)(y) above occurs or will occur, the contractual terms in relation to such transaction or series of related transactions shall include contractual terms relating to the payment by the applicable NuclearCo (or its affiliate or successors) of costs related to decommissioning of the applicable nuclear generating station and management of used nuclear fuel and other nuclear waste arising from the operation of the applicable nuclear generating station, with the amount and timing of such payments by the applicable NuclearCo to be determined by the Company, acting reasonably, having regard to the expected amount and timing of such costs arising in relation to the period following the completion of the applicable transaction (or series of related transactions), the amount of funds that have already been set aside to pay for such costs (whether pursuant to the Ontario Nuclear Funds Agreement or otherwise), and the Company's ability to otherwise collect amounts to pay for such costs; and

(f) the Company shall have delivered to the Trustee an opinion of the Company's counsel (as to matters customarily addressed by counsel) and an officers' certificate stating that the foregoing conditions precedent have been satisfied.

For greater certainty, (i) as part of such transaction or series of related transactions, the Company and its Designated Subsidiaries shall have the right, at their discretion, to either retain or transfer to any NuclearCo any non-nuclear generation assets or non-hydro-electric generation assets of the Company and its Designated Subsidiaries and (ii) so long as the foregoing conditions are complied with, no NuclearCo shall have any obligations under the Trust Indenture or any of the Notes.

Events of Default

The following are Events of Default applicable to all Notes issued pursuant to the Trust Indenture, including the Notes:

(1) failure to pay principal or premium, if any, when due and any such failure continues for a period of five days

(2) failure to make payment of interest when due and any such failure continues for a period of 45 days;

(3) the consummation by the Company of a transaction or series of related transactions, either directly or indirectly through a Designated Subsidiary, in which all or substantially all of the undertaking, property and assets of the Company and its Designated Subsidiaries on a consolidated basis would become the property of any other person (other than the Company and/or its Designated Subsidiaries), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or otherwise (provided that, for clarity, the assets and liabilities of any Financing Entity shall not be considered for purposes of such consolidation), other than as permitted by or in accordance with the provisions described above under "Mergers, Consolidations and Sales of Assets";

(4) failure to observe or perform any other covenant or condition contained in the Trust Indenture or a Supplemental Indenture if such failure continues for a period of 60 days or more after written notice thereof has been given to the Company by the Trustee or by the holders of at least 25% of all Notes, as the case may be;

(5) the Company or any Material Subsidiary (as defined below) fails to make payment at stated maturity, or otherwise when due, of principal, premium (if any) or interest due on any Indebtedness of the Company or a Material Subsidiary, the outstanding principal amount of which exceeds the greater of $150 million and 1% of the Consolidated Net Worth, beyond the applicable grace period, if any, under the terms of such Indebtedness;

(6) failure by the Company or any Material Subsidiary to observe or perform any provision of any agreement under which Indebtedness of the Company or a Material Subsidiary is created if such failure has the effect of causing more than the greater of $150 million and 1% of the Consolidated Net Worth of such Indebtedness in the aggregate to become due and payable or to be required to be redeemed or repurchased before its stated maturity;

(7) one or more final judgments are rendered against the Company or any Material Subsidiary in an aggregate amount in excess of the greater of $150 million and 1% of the Consolidated Net Worth by a court of competent jurisdiction and remain undischarged or unstayed for a period of 60 days or more;

(8) winding-up, liquidation or dissolution of the Company, or

(9) the making by the Company or any Material Subsidiary of an assignment for the benefit of its creditors or other specified events of bankruptcy or insolvency affecting the Company or any Material Subsidiary (subject to a 60 day cure period if the bankruptcy application is made by a creditor, rather than by the Company or a Material Subsidiary).

If an Event of Default applicable only to the issued and outstanding Notes of a series occurs and is continuing, either the Trustee or the holders of not less than 25% in principal amount of Notes of that series then outstanding may declare the principal of, and interest and premium, if any, on all Notes of that series to be due and payable immediately.

If, however, an Event of Default applicable to all Notes issued and outstanding under the Trust Indenture, or an Event of Default described in clause (5), (6), (7), (8) or (9) above occurs and is continuing, either the Trustee or the holders of not less than 25% in principal amount of all issued and outstanding Notes, treated as one class, may declare the principal amount of all the Notes then outstanding to be due and payable immediately.

Subject to the provisions of the Trust Indenture relating to the duties of the Trustee, in case an Event of Default applicable to any Notes shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Trust Indenture at the request or direction of any of the holders of those Notes, unless those holders shall have offered to the Trustee reasonable indemnity. Subject to such provisions for the indemnification of the Trustee, the holders of a majority in principal amount of Notes of all series affected by an Event of Default will have the right to direct the time, method and place of conducting any proceedings for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee in respect of the Notes of all series affected by that Event of Default.

Defeasance

The Trust Indenture requires the Trustee to release the Company from its obligations under the Trust Indenture relating to a particular series of Notes if specified conditions are satisfied. Among other things, the Company must deposit money or securities for the payment of all principal of and interest and any other amounts on that series of Notes as well as for the payment of the expenses of the Trustee. The deposited money or securities must be denominated in the currency in which principal of these Notes is payable and, in the case of deposited securities, must constitute direct obligations of Canada or specified provinces of Canada or an agency or instrumentality of Canada.

Amendments and Waivers

The Trust Indenture provides that the Company and the Trustee may enter into supplemental indentures ("Supplemental Indentures") without the consent of the holders of the Notes of any or all series to:

- add limitations or restrictions to be observed upon the amount or issue of Notes, provided that such limitations or restrictions shall not be materially adverse to the interests of the holders of the Notes;

- add covenants for the protection of the holders of the Notes of any series;

- provide for any additional Event of Default;

- make such provisions not inconsistent with the Trust Indenture as may be necessary or desirable with respect to matters or questions arising thereunder, including the making of any modifications in the form of the Notes which do not affect the substance thereof and which it may be expedient to make, provided that such provisions and modifications will not adversely affect the holders of Notes;

- provide for the issue of Notes of any one or more series and establish the form and terms of any series of Notes;

- evidence the succession, or successive successions, of successors to the Company and the covenants and obligations assumed by any such successor, in accordance with the provisions of the Trust Indenture; and

- giving effect to any extraordinary resolution or ordinary resolution of the holders of Notes in accordance with the Trust Indenture.

Other amendments and modifications of the Trust Indenture, Supplemental Indentures and Notes may be made by the Company and the Trustee with the consent of the holders of not less than 66⅔% (and in certain circumstances, a majority) in principal amount of Notes of all series voting on such amendment or modification and, if the rights of holders of Notes of a particular series of Notes would be affected differently than rights of holders of Notes of other series, not less than 66⅔% (and, in certain circumstances, a majority) in principal amount of Notes of the series so affected by that modification or amendment voting on such amendment or modification, in each case, voting as one class. However, no modification or amendment may, without the consent of the holder of each outstanding Note of the affected series,

- reduce the principal amount at maturity of, extend the fixed maturity of, or alter the redemption provisions of, those Notes;

- change the currency in which those Notes or any premium or accrued interest is payable;

- reduce the percentage in principal amount at maturity outstanding of those Notes that must consent to an amendment, supplement or waiver or consent to take any action under the Trust Indenture, Supplemental Indenture or those Notes;

- impair the right to institute suit for the enforcement of any payment on or with respect to those Notes;

- waive a default in payment with respect to those Notes;

- reduce the rate or extend the time for payment of interest on those Notes;

- affect the ranking of those Notes in a manner adverse to the holders; or

- make any changes to the Trust Indenture, Supplemental Indentures or those Notes that would result in the Company being required to make any withholding or deduction from payments made under or with respect to those Notes.

The holders of $66^{2}/_{3}$% in principal amount of the Notes of all series with respect to which an Event of Default shall have occurred and be continuing, voting as one class, may waive any Event of Default, except in the case of a default in payment of principal with respect to the Notes or except,

further, in respect of a covenant or provision which cannot be modified or amended without the consent of the holder of each outstanding Note affected.

Limitations Regarding Fair Hydro Plan Financing Entities

All assets and liabilities held by any Financing Entity , as well as the Financing Entities, shall be disregarded in the determination of Consolidated Funded Indebtedness, Consolidated Net Worth and Total Consolidated Capitalization, and will not be considered Designated Subsidiaries or Material Subsidiaries under the Trust Indenture (notwithstanding the consolidation of such Financing Entities in OPG's financial statements). None of OPG, its subsidiaries, the Trustee or any holder of Notes shall have any recourse whatsoever against any Financing Entity or the assets of any Financing Entity, provided that, for clarity, the foregoing will not affect any of the Company's or its subsidiaries' rights and remedies as a holder of Indebtedness of a Financing Entity in accordance with the provisions of that Indebtedness. Neither the Company nor any Designated Subsidiary may guarantee or have any other Contingent Liabilities in respect of Indebtedness of any Financing Entity to the extent the amount of such guarantees and other Contingent Liabilities in respect of Indebtedness of any Financing Entity exceeds $50,000,000 (the amount of such guarantees and other Contingent Liabilities in respect of Indebtedness of any Financing Entity below such threshold being the "Permitted FHPA Debt"). Other than the Permitted FHPA Debt and holding Indebtedness of Financing Entities, neither the Company nor any Designated Subsidiary will have any Contingent Liabilities in respect of Indebtedness of any Financing Entity.

Definitions

In addition to the definitions set out above, the Trust Indenture contains definitions substantially to the following effect:

*"Applicable Law"* means all laws, statutes, by-laws, rules, regulations, principles of law and equity, orders, ordinances, legally binding codes, guidelines, standards and policies and other similar requirements, whether international, multinational, national, federal, provincial, state, county, municipal, local or other domestic or foreign, and the terms and conditions of any approval, permit, authorization, registration, certificate, franchise or licence, in each case of any Governmental Authority;

*"Capital Lease Obligation"* means any monetary obligation of the Company or a Designated Subsidiary under any leasing or similar arrangement which, in accordance with GAAP, would be classified as a capital lease and for the purposes of the Trust Indenture, the amount of Capital Lease Obligations shall be the capitalized amount thereof, determined in accordance with GAAP;

*"Consolidated Funded Indebtedness"* means, at any time and from time to time, the aggregate amount of all Funded Indebtedness of the Company and its Designated Subsidiaries determined as at such time on a consolidated basis in accordance with GAAP. For greater certainty, the Funded Indebtedness of the Financing Entities (with the exception of any outstanding Permitted FHPA Debt as at that date) shall not be included in determining "Consolidated Funded Indebtedness";

*"Consolidated Net Worth"* means, at any time and from time to time, the consolidated shareholders' equity of the Company and its Designated Subsidiaries as at such time determined in accordance with GAAP. For greater certainty, (i) the shareholders' equity of any subsidiary that is not a Designated Subsidiary and (ii) the shareholders' equity, if any, of the Financing Entities shall not be included in determining "Consolidated Net Worth";

*"Contingent Liability"* means any agreement, undertaking or arrangement by which any person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement,

contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the obligations of any other person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other person. The amount of any person's obligation under any Contingent Liability will, subject to any limitation contained in that Contingent Liability, be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the obligation guaranteed thereby;

*"Designated Subsidiary"* means any subsidiary which is designated as such by the Company in accordance with the covenants described under " – Designation of Subsidiaries as Designated Subsidiaries" until such designation is terminated in accordance with the terms described under " – Designation of Subsidiaries as Designated Subsidiaries";

*"Financial Instrument Obligations"* means, with respect to any person at any time, the obligations of such person under any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, commodity future, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing to the extent of the net amount due to or accruing due by the person thereunder (determined by marking the same to market at such time in accordance with its terms);

*"Funded Indebtedness"* means with respect to any person and as at any time and from time to time, all Indebtedness created, assumed or guaranteed as at such time by such person which matures by its terms on, or is renewable at the option of such person to, a date more than 18 months after the date of the original creation, assumption or guarantee thereof; provided that any Indebtedness among the Company and its Designated Subsidiaries or among the Company's Designated Subsidiaries, Subordinated Indebtedness, Non-Recourse Debt, Financial Instrument Obligations, Capital Lease Obligations and Purchase Money Obligations shall not be included as Funded Indebtedness. For greater certainty, no Indebtedness created, assumed or guaranteed by a Financing Entity shall be included as Funded Indebtedness of the Company or any Designated Subsidiary (except and only to the extent of any outstanding Permitted FHPA Debt as at such time);

*"GAAP"* means as at any date of determination:

(1) accounting principles which are recognized as being generally accepted in Canada, if the Company is then preparing its financial statements in accordance with such principles; or

(2) accounting principles which are recognized as being generally accepted in the United States, if the Company is then preparing its financial statements in accordance with such principles;

*"Governmental Authority"* means any international, multinational, federal, provincial, state, territorial, regional, municipal or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumental authority, body, agency, department bureau, board, tribunal or entity, or any arbitrator with authority to bind a person at law;

*"Indebtedness"* means, with respect to any person, without duplication:

(1) all obligations of such person for borrowed money, including obligations with respect to bankers' acceptances and reimbursement obligations in respect of letters of credit;

(2) all obligations issued or assumed by such person in connection with its acquisition of property in respect of the deferred purchase price of that property where such purchase price is deferred six months or longer;

(3) all Capital Lease Obligations and Purchase Money Obligations of such person; and

(4) all Contingent Liabilities of such person in respect of obligations of any person of the type referred to above;

*"Material Subsidiary"* means, as at any date, a Designated Subsidiary,

(1) the total assets of which represent more than 5% of the total assets of the Company determined on a consolidated basis as shown in the most recent quarterly or annual consolidated financial statements of the Company publicly released or filed with the Trustee; or

(2) the total revenues of which represent more than 5% of the total revenues of the Company determined on a consolidated basis as shown in the most recent quarterly or annual consolidated financial statements of the Company publicly released or filed with the Trustee;

provided that, for greater certainty, (i) the assets and revenues of a subsidiary that is not a Designated Subsidiary, and (ii) the assets and revenues of a Financing Entity shall not, in either case, be included in determining whether a Designated Subsidiary is a "Material Subsidiary"; and provided further that no Financing Entity shall be a Material Subsidiary;

"*Non-Recourse Debt*" means, with respect to a person, any Indebtedness incurred to finance the creation, development, construction, operation or acquisition of an asset of the person or a subsidiary of the person (and any extensions, renewals or refunding of any such Indebtedness) provided that the recourse of the obligee thereof against the person is limited in all circumstances (other than customary exceptions for negligent misrepresentation, fraud and other bad acts) to the asset (including all rights and benefits related to or arising out of the asset) and to the Company's or a Designated Subsidiary's equity or debt interest in, such subsidiary;

"*Ontario Nuclear Funds Agreement*" means the agreement dated as of April 1, 1999 entered into between the Company, certain of its subsidiaries and the Province of Ontario under which, among other things, (i) the parties agree to cause sufficient funds to be accumulated or otherwise be readily available to pay for certain used nuclear fuel and other nuclear waste management and decommissioning costs, (ii) the Province of Ontario agrees to limit the liability that the Company and certain of its subsidiaries face as a result of the increases in certain used nuclear fuel management costs, and (iii) the Province of Ontario agrees to provide certain financial guarantees required by the Company and certain of its subsidiaries under the *Nuclear Safety and Control Act* (Canada), all on and subject to the terms and conditions in that agreement, as amended, supplemented, restated and/or replaced from time to time;

*"Purchase Money Mortgage"* means any Security Interest, mortgage, pledge, charge or other encumbrance created, issued or assumed by the Company or a Designated Subsidiary to secure a Purchase Money Obligation; provided that the Security Interest, mortgage, pledge, charge or other encumbrance is limited to the property (including associated rights) acquired, constructed, installed or improved using the funds advanced to the Company or a Designated Subsidiary in connection with that Purchase Money Obligation;

*"Purchase Money Obligation"* means Indebtedness of the Company or a Designated Subsidiary incurred or assumed to finance the purchase price, in whole or in part, of any property (except any Indebtedness which constitutes Funded Indebtedness and which was incurred or assumed to finance the purchase price, in whole or in part, of any shares, bonds or other securities) or incurred to finance the cost, in whole or in part, of construction or installation of or improvements to any real property or fixtures provided that such Indebtedness is incurred or assumed within 24 months after the purchase of such real property or fixtures or the completion of such construction, installation or improvements, as the case may be, and includes any extension, renewal or refunding of any such Indebtedness, so long as the principal amount thereof outstanding on the date of such extension, renewal or refunding is not increased;

*"Security Interest"* means any assignment, mortgage, charge (whether fixed or floating), hypothec, security interest, pledge, lien, or other encumbrance on or interest in property or assets that secures payment or performance of Indebtedness;

"*Subordinated Indebtedness*" means all Indebtedness of the Company in respect of which, upon any distribution of assets of the Company upon any dissolution, winding-up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors, or any other marshalling of the assets and liabilities of the Company or otherwise), the payment of all Indebtedness and liabilities of the Company in connection with the Notes, including principal, interest, fees and expenses, must be satisfied in full prior to any amount being applied to such Indebtedness;

*"Total Consolidated Capitalization"* means, at any time and from time to time, without duplication, the sum of (a) the principal amount of all Consolidated Funded Indebtedness; (b) the principal amount of all Subordinated Indebtedness; and (c) the Consolidated Net Worth, in each case, as at such time and as determined by the Company; and

*"Wholly-Owned Designated Subsidiary"* means a Designated Subsidiary, all of the outstanding shares or other ownership interests in the capital of which are owned, directly or indirectly, by or for the Company and/or by or for one or more other Wholly-Owned Designated Subsidiaries.

**Global Notes**

Notes may be issued in the form of fully registered global notes ("Global Notes") held by, or on behalf of, CDS Clearing and Depository Services Inc. ("CDS") or another corporation performing similar services that is acceptable to the Trustee (the "Depository") as custodian of the Global Notes and, in such event, Notes will be registered in the name of the Depository or its nominee (a "Nominee"). Where CDS acts as Depository for a series of Notes, The Depositary Trust Company ("DTC"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("Euroclear") and Clearstream Banking, société anonyme ("Clearstream, Luxembourg"), in each case as direct or indirect participants in CDS, will record beneficial ownership of such series of Notes on behalf of their respective accountholders or participants, to the extent the Company makes such series of Notes eligible with DTC, Euroclear or Clearstream, Luxembourg, as applicable (and the Company specifies as such in the prospectus supplement or pricing supplement with respect to the particular series of Notes).

Purchasers of Notes represented by Global Notes will not receive Notes in definitive form ("Definitive Notes"). Instead, ownership of such Notes will be constituted through beneficial interests in the Global Notes, and will be represented through book-entry accounts of institutions (including the Dealers), as direct and indirect participants of the Depository ("participants") which, to the extent the Depository is CDS, may include DTC, Euroclear and Clearstream, Luxembourg to the extent applicable as noted above, acting on behalf of the beneficial owners of such Notes. Each purchaser of a Note

represented by a Global Note will receive a customer confirmation of purchase from the Dealer or other person from or through whom the Note is purchased in accordance with the practices and procedures of such Dealer or other person. The Depository will be responsible for establishing and maintaining book-entry accounts for its participants having interests in Global Notes.

If Global Note(s) are issued and the Depository notifies the Company that it is unwilling or unable to continue as depository in connection with the Global Notes, or if at any time the Depository ceases to be a clearing agency or otherwise ceases to be depository and the Company and the Trustee are unable to locate a qualified replacement, or if the Company elects to terminate the book-entry system, beneficial owners of Notes represented by Global Notes will receive Definitive Notes.

**DTC, Euroclear and Clearstream, Luxembourg**

Where CDS acts as Depository for a series of Notes, to the extent the Company makes such series of Notes eligible with DTC, Euroclear or Clearstream, Luxembourg (and the Company specifies as such in the prospectus supplement or pricing supplement with respect to such series of Notes), holders may hold such series of Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Notes on its behalf by delivering Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this short form prospectus concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Company's understanding of the policies of such organizations which may change at any time without notice.

**Fixed Rate Notes**

Each Fixed Rate Note will bear interest from its original issue date at the rate per annum on the face thereof until the principal amount thereof is paid or made available for payment. Interest on a Fixed Rate Note will be calculated and payable monthly, quarterly, semi-annually or annually in arrears on the dates specified in such Fixed Rate Note, or other such dates as may be agreed to between the purchaser of the Note and the Company (each, an "Interest Payment Date") and at maturity or upon earlier redemption

or repayment. Interest Payment Dates will be set forth in the applicable prospectus supplement or pricing supplement for the Fixed Rate Note. Each payment of interest in respect of an Interest Payment Date will include interest accrued to but excluding such Interest Payment Date.

**Floating Rate Notes**

Each Floating Rate Note will bear interest from its original issue date at rates described in the Floating Rate Note and specified in the applicable prospectus supplement or pricing supplement.

The rate of interest on each Floating Rate Note will be reset monthly, quarterly, or as otherwise specified in the Floating Rate Note and applicable prospectus supplement or pricing supplement. Interest on each Floating Rate Note will be payable monthly, quarterly or as otherwise specified in the Floating Rate Note and applicable prospectus supplement or pricing supplement. Unless otherwise specified in the Floating Rate Note and applicable prospectus supplement or pricing supplement, the Company will be the calculation agent with respect to the Floating Rate Notes. Upon request of the holder of any Floating Rate Note, the Company will provide the interest rate then in effect.

**Payment of Interest and Principal**

Interest on each interest bearing Note will be payable on such periodic basis or at maturity and on such date or dates as may be agreed upon by the Company and the purchaser of the Note. Payments of interest on each interest bearing Definitive Note will be made by cheque payable on the interest payment date and mailed to the address of, or if so directed by the holder, funds representing the interest payable will be forwarded by electronic funds transfer on the interest payment date to the account of, the holder appearing on the registers maintained by BNY Trust Company of Canada, as registrar and transfer agent (the "Transfer Agent", which term shall include such other registrar or transfer agent as may from time to time be appointed by the Company) at the close of business in the City of Toronto on the tenth business day (with "business day" being a day other than Saturday, Sunday, or a day on which financial institutions in Toronto, Ontario are authorized or obligated by law or regulation to close) prior to the interest payment date or such other day specified to the Trustee by the Company and reflected in a Supplemental Indenture for a particular series of Notes. Payment of principal will be made at any branch in Canada of the bank designated in a Definitive Note against surrender of the Note.

Payment of interest and principal on each Global Note will be made to the Depository or the Nominee, as the case may be, as the registered holder of the Global Note. Interest payments on Global Notes will be made by wire transfer no later than the date interest is payable. Principal payments on Global Notes will be made by wire transfer on the maturity date delivered to the Depository or the Nominee, as the case may be, at maturity against receipt of the Global Note. As long as the Depository or the Nominee is the registered owner of a Global Note, the Depository or the Nominee, as the case may be, will be considered the sole owner of the Global Note for the purposes of receiving payment on the Note and for all other purposes under the Trust Indenture and the Note.

The Company expects that the Depository or Nominee, upon receipt of any payment of principal or interest in respect of a Global Note, will credit participants' accounts, on the date principal or interest is payable, with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Note as shown on the records of the Depository or the Nominee. The Company also expects that such payments of principal and interest by participants to the owners of beneficial interests in such Global Note held through such participants will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name" and will be the responsibility of such participants. The responsibility and liability of the Company and the Trustee in respect of Notes represented by Global Notes is limited to

making payment of any principal and interest due on such Global Notes to the Depository or the Nominee.

Payments of interest and principal will be made in the currency in which the Note is denominated unless otherwise specified in the applicable prospectus supplement or pricing supplement.

If the payment date for any amount of principal or interest on any Note is not, at the place of payment, a business day such payment will be made on the next business day and the holder of such Note shall not be entitled to any further interest or other payment in respect of such delay.

**Transfers**

The registered holder of a Definitive Note may transfer such Note upon payment of taxes incidental thereto, if any, by executing the form of transfer provided on the reverse side of the Note and surrendering the Note to the Transfer Agent at its principal office in the City of Toronto, upon which one or more new Definitive Notes will be issued in authorized denominations in the same aggregate principal amount as the Note so transferred, registered in the name or names of the transferee or transferees.

Transfers of beneficial ownership in Notes represented by Global Notes will be effected through records maintained by the Depository for such Global Notes or the Nominee (with respect to the interest of participants) and on the records of participants (with respect to the interest of beneficial owners other than participants). Beneficial owners of an interest in a Note represented by a Global Note who are not participants in the Depository's book-entry system, but who desire to purchase, sell or otherwise transfer ownership of or other interests in Global Notes, may do so only through participants in the Depository's book-entry system. A purchaser's interest in a Note represented by a Global Note will only be exchangeable for Definitive Notes in the limited circumstances set forth under the heading "Global Notes" above and in accordance with the procedures established by the Depository or the Nominee.

The ability of a beneficial owner of an interest in a Note represented by a Global Note to pledge the Note or otherwise take action with respect to such owner's interest therein other than through a participant may be limited due to the lack of a physical certificate.

No transfer of a Note will be registered during the 10 business days immediately preceding any date fixed for payment of interest on such Note or payment of the principal amount thereof.

## PLAN OF DISTRIBUTION

Pursuant to the terms of a dealer agreement dated ■, 2017 (the "Dealer Agreement"), the Notes may be offered for sale severally and on a continuous basis by one or more of the Dealers, in each case, acting as agent of the Company or as principal. Where the Notes are offered by the Dealer(s) as agent(s), the commissions payable by the Company in connection with sales of such Notes shall be agreed from time to time between the Company and any such Dealer(s). Where the Notes are purchased by the Dealer(s) as principal, the Notes shall be purchased at such prices and with such commissions as may be agreed from time to time between the Company and any such Dealer(s) for resale to the public at prices to be negotiated with each purchaser. Such resale prices may vary during the distribution period and as between purchasers. Each Dealer's compensation will increase or decrease by the amount by which the aggregate price paid for Notes by purchasers exceeds or is less than the price paid by the Dealer, when purchasing as principal, to the Company. The commissions payable in connection with sales of Notes will be set forth in a prospectus supplement or pricing supplement which will be delivered to purchasers together with this prospectus. The Company may also offer the Notes directly to potential purchasers

pursuant to applicable statutory exemptions at prices and upon terms negotiated between the purchaser and the Company, in which case no commissions will be paid to the Dealers.

The obligations of a Dealer under the Dealer Agreement to purchase any particular issue of Notes as principal may be terminated at its discretion upon the occurrence of certain stated events. Such events are set out in detail in the Dealer Agreement and include, but are not limited to: (i) an event which prevents or restricts the trading in the Notes or any other securities of the Company or the distribution of the Notes; (ii) the occurrence of any material change in the business, affairs, operations, assets, liabilities (contingent or otherwise), capital or ownership of OPG taken as a whole; (iii) a public announcement by DBRS or S&P that it has placed under surveillance or review, with possible negative or uncertain implications, its rating of any debt securities of the Company; and (iv) certain downgrades of the ratings assigned by S&P and DBRS to the long-term debt securities of the Company. In addition, the Company has agreed under the terms of the Dealer Agreement to reimburse the Dealers for certain expenses and to indemnify the Dealers against certain liabilities.

The Company and, if applicable, the Dealers, may reject any offer to purchase the Notes in whole or in part. The Company also reserves the right to withdraw, cancel or modify the offering of the Notes under this prospectus without notice.

In connection with any offering of Notes, the Dealers may over-allot or effect transactions which stabilize or maintain the market price of the Notes offered at a level above that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time. In addition, the Dealers may from time to time purchase and sell the Notes in the secondary market but are not obliged to do so. Unless otherwise indicated in a prospectus supplement or pricing supplement, there is no market through which Notes may be resold and purchasers may not be able to resell Notes purchased under this short form prospectus. There can be no assurance that there will be a secondary market for the Notes. The offering price and other terms for such sales in the secondary market may, from time to time, be varied by the Dealers.

The offering of Notes hereunder is directed only to residents of the provinces of Canada and in the United States in certain transactions exempt from the provisions of the United States Securities Act of 1933, as amended (the "Securities Act"). The Notes have not been and will not be registered under the Securities Act or any state securities laws and may not be offered or sold within the United States except to "qualified institutional buyers" in reliance upon Rule 144A under the Securities Act. In addition, until 40 days after the commencement of the offering of an issue of Notes, an offer or sale of that issue within the United States by any Dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with an exemption under the Securities Act.

Certain of the Dealers may be subsidiaries or affiliates of lenders (the "Lenders") to the Company or its subsidiaries, now or in the future. Proceeds from the sale of particular series or issues of Notes in which such Dealers are acting as principals or Dealer may be used to repay indebtedness owing to one or more of the Lenders. Consequently, if and when there is outstanding indebtedness to any of the Lenders, the Company may be considered a connected issuer of those Dealers who are affiliates of such Lenders for purposes of the securities laws of certain Canadian provinces. The particulars of any such indebtedness will be included in a prospectus supplement or pricing supplement if applicable to any offering of Notes. The decision to distribute the Notes will be made by the Company and the terms and conditions of distribution will be determined through negotiations between the Company and the Dealers. The Lenders will not have any involvement in such decision or determination. Other than payment of their portion of the commissions, if applicable, or as set forth in the applicable prospectus supplement or

pricing supplement, none of the proceeds of such offerings of Notes will be applied, directly or indirectly, for the benefit of the Dealers or their affiliates. See "Use of Proceeds".

## USE OF PROCEEDS

The net proceeds from the sale of Notes will be added to the general funds of the Company and, together with funding from other sources, including internally generated funds and other external financings, will be used to finance the Company's working capital requirements, to repay outstanding bank loans (which may include indebtedness owing to one or more of the Lenders), debentures, notes or other Indebtedness, to make advances to subsidiaries of the Company, to finance the Company's capital expenditure program, to make acquisitions and for other general corporate purposes. The Company expects that up to $300 million of the net proceeds from the sale of the Notes during the term of this prospectus may be used to finance a portion of the Company's debt investment in the Financing Entities. See "Recent Developments — Ontario Fair Hydro Plan". Where appropriate, a prospectus supplement or pricing supplement will contain more specific information about the use of proceeds from each sale of Notes. All expenses relating to an offering of Notes, including any compensation paid to the Dealers, will be paid out of the Company's general funds or netted out of the proceeds of the particular offering of Notes. The Company may from time to time issue debt instruments and incur additional Indebtedness otherwise than through the issue of Notes pursuant to this short form prospectus.

## PRIOR SALES

The Company has not issued Notes or securities convertible or exchangeable into Notes prior to the date hereof.

## CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

### General

The following summary describes the principal Canadian federal income tax considerations generally applicable to a purchaser who acquires Notes, including entitlement to all payments thereunder, as a beneficial owner pursuant to this short form prospectus and who, at all relevant times, for purposes of the application of the Tax Act, deals at arm's length with the Company and each Dealer and holds Notes as capital property (a "Holder"). Generally, Notes will be capital property to a purchaser provided the purchaser does not acquire or hold those Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain purchasers resident in Canada may be entitled to make or may have already made the irrevocable election permitted by subsection 39(4) of the Tax Act the effect of which may be to deem to be capital property any Notes (and all other "Canadian securities", as defined in the Tax Act) owned by such purchasers in the taxation year in which the election is made and in all subsequent taxation years. Purchasers whose Notes might not otherwise be considered to be capital property should consult their own tax advisors concerning this election.

This summary is based on the current provisions of the Tax Act and on an understanding of the current administrative policies and assessing practices of the Canada Revenue Agency published in writing prior to the date hereof. This summary takes into account all specific proposals to amend the Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "Proposed Amendments") and assumes that all Proposed Amendments will be enacted in the form proposed. However, no assurances can be given that the Proposed Amendments will be enacted as proposed, or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policy or assessing practice whether by legislative, administrative or judicial action nor

does it take into account tax legislation or considerations of any province, territory or foreign jurisdiction, which may differ from those discussed herein.

Depending upon the terms of any offering of the Notes as set forth in an applicable prospectus supplement or pricing supplement, the Canadian federal income tax considerations applicable to a Holder of the Notes at the time of such offering may be different from those described below. Such considerations may be described more particularly when such Notes are offered (and then only to the extent material) in the prospectus supplement or pricing supplement related thereto. In the event the Canadian federal income tax considerations are described in such prospectus supplement or pricing supplement, the description below will be superseded by the description in the prospectus supplement or pricing supplement to the extent indicated therein.

**This summary is of a general nature only and is not, and is not intended to be, legal or tax advice to any particular purchaser. This summary is not exhaustive of all Canadian federal income tax considerations. Accordingly, prospective purchasers of Notes should consult their own tax advisors having regard to their own particular circumstances.**

Currency Conversion

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of the Notes issued in a non-Canadian currency must be converted into Canadian dollars based on exchange rates as determined in accordance with the Tax Act. The amount of interest required to be included in the income of, and capital gains or capital losses realized by, a Holder may be affected by fluctuations in the applicable exchange rate.

**Holders Resident in Canada**

This portion of the summary is generally applicable to a Holder who, at all relevant times, for purposes of the application of the Tax Act, is, or is deemed to be, resident in Canada, is not affiliated with the Company or any Dealer and has not entered into and will not enter into, with respect to the Notes acquired by such Holder, a "derivative forward agreement" as defined in the Tax Act (a "Resident Holder").

This portion of the summary is not applicable to (i) a purchaser an interest in which is a "tax shelter investment", (ii) a purchaser that is, for purposes of certain rules (referred to as the mark-to-market rules) applicable to securities held by financial institutions, a "financial institution", or (iii) a purchaser that reports its "Canadian tax results" in a currency other than Canadian currency, each as defined in the Tax Act. Such purchasers should consult their own tax advisors.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of the Government's intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement. Resident Holders that are private Canadian corporations should consult their own tax advisors.

Taxation of Interest and other Amounts

A Resident Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year any interest on a Note that accrues or is deemed to accrue to such Resident Holder to the end of that taxation year, or becomes receivable or is received by the Resident Holder before the end of such year, to the

extent that such interest was not included in computing the Resident Holder's income for a preceding taxation year.

Any other Resident Holder, including an individual and a trust of which neither a partnership nor a corporation is a beneficiary, will be required to include in computing its income for a taxation year any interest on a Note that is received or receivable by such Resident Holder in that taxation year (depending on the method regularly followed by the Resident Holder in computing its income) to the extent that such interest was not included in computing the Resident Holder's income for a preceding taxation year. Such a Resident Holder may also be required to include in the Resident Holder's income, for any taxation year that includes an "anniversary day" (as defined in the Tax Act) of the Note, any interest, or amount that is considered for the purposes of the Tax Act to be interest, on the Note which accrues to the Resident Holder to the end of such day, to the extent that such interest was not otherwise included in computing the Resident Holder's income for the year or a preceding taxation year. For this purpose, an "anniversary day" means the day that is one year after the day immediately preceding the date of issue of a Note, the day that occurs at every successive one year interval from that day and the day on which a Note is disposed of.

Where a Resident Holder is required to include an amount on account of interest on a Note that accrued in respect of the period prior to its date of acquisition, the Resident Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Resident Holder of the Note will be reduced by the amount which is so deducted.

Any amount paid by the Company to a Resident Holder as a premium, penalty or bonus because of early repayment of all or part of the principal amount of a Note before its maturity will be deemed to be received by the Resident Holder as interest on the Note at that time and will be required to be included in computing the Resident Holder's income as described above, to the extent such amount can reasonably be considered to relate to, and does not exceed the value at the time of payment of, interest that, but for the repayment, would have been paid or payable by the Company on the Note for a taxation year of the Company ending after that time.

If the Notes are issued at a discount from their face value, a Resident Holder may be required to include an additional amount in computing its income, either in taxation years in which such amount accrues or in a taxation year in which the discount is received or receivable by the Resident Holder. Resident Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Notes

On a disposition or deemed disposition of a Note, including a redemption, repayment prior to or on maturity or repurchase, a Resident Holder will generally be required to include in computing its income for the taxation year in which the disposition occurs the amount of interest that has accrued, or that has been deemed to have accrued, on the Note to that time except to the extent that such amount has otherwise been included in the Resident Holder's income for the year or a preceding taxation year.

Generally, on a disposition or deemed disposition of a Note, including a redemption, payment on maturity or purchase for cancellation, a Resident Holder will realize a capital gain (or capital loss) equal to the amount, if any, by which the proceeds of disposition, net of any amount included in the Resident Holder's income as interest (as described above) and any reasonable costs of disposition, exceed (or are less than) the adjusted cost base to the Resident Holder of the Note immediately before the disposition or deemed disposition. Generally, a Resident Holder is required to include in computing its income for a taxation year one-half of the amount of any capital gain (a "taxable capital gain") realized in the year.

Subject to and in accordance with the provisions of the Tax Act, a Resident Holder is required to deduct one-half of the amount of any capital loss (an "allowable capital loss") realized in a taxation year from taxable capital gains realized by the Resident Holder in the year and allowable capital losses in excess of taxable capital gains for the year may be carried back and deducted in any of the three preceding taxation years or carried forward and deducted in any subsequent taxation year against net taxable capital gains realized in such years.

Additional Refundable Tax

A Resident Holder that is, throughout its taxation year, a "Canadian-controlled private corporation" (as defined in the Tax Act) may be subject to pay a refundable tax on its "aggregate investment income" (as defined in the Tax Act), including amounts in respect of taxable capital gains and interest.

Alternative Minimum Tax

Individuals (other than certain trusts) may be subject to an alternative minimum tax under the Tax Act in respect of net capital gains realized by them.

**Holders Not Resident in Canada**

This portion of the summary is generally applicable to a Holder who, at all relevant times, for purposes of the application of the Tax Act (1) is not, and is not deemed to be, resident in Canada, and (2) does not use or hold the Notes in a business carried on or deemed to be carried on in Canada (a "Non-Resident Holder"). Special rules, which are not discussed in this summary, may apply to a Non-Resident Holder that is an insurer that carries on an insurance business in Canada and elsewhere or is an "authorized foreign bank" as defined in the Tax Act.

This portion of the summary is not applicable to a Non-Resident Holder that is a "specified shareholder" (as defined in subsection 18(5) the Tax Act) of the Company or that does not deal at arm's length for purposes of the Tax Act with a "specified shareholder" of the Company. Generally, for this purpose, a "specified shareholder" is a shareholder that owns or is deemed to own, either alone or together with persons with which the shareholder does not deal at arm's length for purposes of the Tax Act, shares of the Company's capital stock that either (i) give such shareholders 25% or more of the votes that could be cast at an annual meeting of the shareholders or (ii) have a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the Company's capital stock. Such Non-Resident Holders should consult their own tax advisors.

No Canadian withholding tax will apply to interest, principal or premium paid or credited to a Non-Resident Holder by the Company on a Note or to the proceeds received by a Non-Resident Holder on the disposition of a Note including a redemption, repayment prior to or on maturity or repurchase, unless all or any portion of such interest is contingent or dependent on the use of or production from property in Canada or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class or series of shares of the capital stock of a corporation (the "Participating Debt Interest"). The interest on Fixed Rate Notes, and on Floating Rate Notes in respect of which the payment of interest is determined by reference to published rates of a central banking authority or one or more financial institutions, or to recognized market benchmark interest rates or to interest rates on Government of Canada bonds is not Participating Debt Interest and, as such, no Canadian withholding tax will apply to interest paid or credited or deemed to be paid or credited on such Notes.

Generally, no other Canadian federal taxes on income or gains will be payable by a Non-Resident Holder on interest, principal or premium paid or credited to a Non-Resident Holder by the Company on a Note or on the proceeds received by a Non-Resident Holder on the disposition of a Note including a redemption, repayment prior to or on maturity or repurchase.

## RISK FACTORS

In addition to the other information contained and incorporated by reference in this short form prospectus, a purchaser should consult its own financial and legal advisors and should carefully consider the following risk factors before investing in the Notes. Notes will not be an appropriate investment for a purchaser if the purchaser does not understand the terms of the Notes or financial matters in general. A purchaser should not purchase Notes unless the purchaser understands, and can bear, all of the investment risks involving the Notes. For a discussion of the risks to which the Company's business and industry are subject, please see the section entitled "Risk Factors" in the Company's annual information form, and the section entitled "Risk Management" in the Company's annual MD&A. In addition to those risks, an investment in the Notes is subject to the following additional risks:

### Rank of Notes and Corporate Structure

The Notes will be direct unsecured obligations of the Company and will rank *pari passu* with all other unsecured and unsubordinated indebtedness of the Company from time to time outstanding, including, but not limited to, indebtedness of the Company under its $1 billion bank credit facility provided by a syndicate of lenders, an aggregate amount of approximately $3.3 billion senior notes payable to the Ontario Electricity Financial Corporation, and its $700 million general corporate credit facility provided by Ontario Electricity Financial Corporation, each as described in Notes 6 and 7 of the Company's financial statements as at and for the fiscal year ended December 31, 2016, its commercial paper program and Notes of every other series issued pursuant to the Trust Indenture. A default by the Company under the Trust Indenture will constitute an event of default under these credit facilities and Notes. There can be no assurance that sufficient funds would be available to the Company at the time of any such default to make any required payment under the Notes.

A significant portion of the Company's assets are owned on by its subsidiaries. The Company's ability to meet its financial obligations will depend, in part, upon the receipt of interest and principal, management fees, cash dividends and other payments from its subsidiaries, together with funds generated from the Company's operations and proceeds raised by the Company through the issuance of debt. The payment of dividends and the making of loans, advances and other payments to the Company by its subsidiaries may be subject to statutory or contractual restrictions, will depend on the earnings of the subsidiaries and will be subject to various business and other considerations.

The Company's subsidiaries are separate legal entities and have no legal obligation, contingent or otherwise, to pay any amount due under the Notes or to make any amounts available to the Company, whether by dividends, interest, loans or other payments. In addition, these subsidiaries have not guaranteed the Notes. Therefore, the Notes will be effectively subordinated to the current and future liabilities, including trade payables and other indebtedness, of the Company's subsidiaries. The creditors of those subsidiaries will have the right to be paid before payment on the Notes from any cash received or held by those subsidiaries. In the event of any bankruptcy, dissolution, liquidation or reorganization of one of those subsidiaries, following payment by the subsidiary of its liabilities, the subsidiary may not have sufficient assets to make payments to the Company in its capacity as an equity holder of such subsidiary.

**There May Be No Trading Market for the Notes and if One Develops, the Notes May Be Subject to Trading Price Fluctuations**

The Notes are new issues of securities for which, unless otherwise indicated in a prospectus supplement or pricing supplement, there is no existing trading market. The Company cannot predict whether any active trading market will develop for the Notes, even if the Notes are listed on a stock exchange.

Even if an active trading market develops for the Notes, the Notes could trade at prices that may be higher or lower than their initial offering prices, depending on many factors, including prevailing interest rates, the Company's results of operations and financial position, the ratings assigned to the Notes and the Company's other debt securities, and the markets for similar debt securities.

If a holder of Notes sells any Notes before their maturity, such holder may have to do so at a substantial discount from the issue price, and as a result such holder may suffer substantial losses.

**Additional Debt Financing May be Required**

The Company expects to borrow to repay the Notes when required to do so under the terms of the Notes and to fund capital expenditures. The Company's ability to arrange sufficient and cost-effective debt financing could be adversely affected by a number of factors, including financial market conditions, the regulatory environment in Ontario, the Company's results of operations and financial condition, the ratings assigned to the Company and its debt securities by credit rating agencies, the current timing of debt maturities and general economic conditions.

**Shareholder Direction**

The Province owns all of the Company's issued and outstanding common shares. Accordingly, the Province has the authority to make appointments to the Company's board of directors and is able to influence major corporate and business decisions. The Company is a party to a memorandum of agreement with the Province (the "MOA"), which serves as the basis of agreement between the Company and the Province regarding the Company's mandate, governance, performance and communications, and establishes accountabilities between OPG and the Province. OPG's strategic imperatives are based on the Company's mandate as set out in the MOA. In addition, the Province has in the past, and may from time to time, provide shareholder directives to the Company that can directly influence major decisions, including those related to project development, timing and strategy of applications for regulated prices, asset divestitures, financing and capital structure. Any such directives could require the Company to undertake activities that result in increased expenditures, that reduce revenues or cash flows or that increase the Company's financial or reputational risk exposure, relative to the business activities or strategies that would have otherwise been undertaken. Conflicts of interest may also arise between the Company and the Province as a result of the Province's broader governmental responsibilities and policy-making objectives (including energy regulatory and environmental matters and the Province's initiatives to mitigate the impact of rising electricity prices on consumers) and the Province's financial interests in dividend or proxy tax payments. There can be no assurance that any potential conflict of interest between the Company and the Province will be resolved on terms satisfactory to the Company, which could have an adverse effect on the Company and its business. Additional information concerning the Company's relationship with the Province is included in the AIF under the section "Interest of Management and Others in Material Transactions – Relationship with the Province and the OEFC".

**Investors May Be Subject to the Risk of Exchange Rate Fluctuations**

An investment in Notes that are denominated or payable in a currency other than the functional currency of the investor entails significant risks that are not associated with a similar investment in a security denominated in the functional currency of the investor. Such risks include, without limitation, the possibility of significant changes in rates of exchange between the two currencies, the possibility of the imposition or modification of foreign exchange controls in respect of one or both of the currencies, and potential illiquidity in the secondary market. These risks generally depend on circumstances over which the Company has no control including political events, government policy and macroeconomic conditions. These risks will vary depending upon the currency or currencies involved and, where appropriate, will be more fully described in a prospectus supplement or pricing supplement.

In certain circumstances, investors may receive payments in currencies other than the currency in which the Notes are denominated. This may subject investors to exchange rate risk in respect of the conversion of principal and interest payments on the Notes from the currency in which the Notes are denominated to the currency of the payment which they receive, and they may also bear any costs of conversion incurred in connection therewith. For example, to the extent the Company makes a series of Notes eligible with DTC, investors who hold such Notes through DTC where CDS acts as Depository and who do not elect to receive principal and interest payments in Canadian dollars will be subject to exchange rate risk in respect of the conversion of Canadian dollar principal and interest payments to U.S. dollars, and will also bear any costs of conversion incurred in connection therewith.

The Notes will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. A judgment by a Canadian court relating to any Note may be awarded only in Canadian currency and such judgment may be based on a rate of exchange in existence on a day other than the day of payment.

This short form prospectus does not describe all the risks of an investment in the Notes denominated or payable in a currency other than an investor's functional currency, and prospective investors should consult their own financial and legal advisor as to the risks entailed with respect thereto. Notes denominated in currencies other than an investor's functional currency are not appropriate investments for investors who are unfamiliar with foreign currency transactions.

**Changes in Interest Rates Will Affect the Market Price or Value of the Notes**

Generally, the market price or value of the Notes will decline as prevailing interest rates for comparable debt instruments rise, and increase as prevailing interest rates for comparable debt instruments decline. Fluctuations in interest rates may also impact borrowing costs of the Company which may adversely affect its creditworthiness. It is impossible to predict whether interest rates will rise or fall.

**Changes in Creditworthiness or Credit Ratings May Affect the Market Price or Value of the Notes**

The perceived creditworthiness of the Company and changes in credit ratings of the Notes may affect the market price or value and the liquidity of the Notes. In addition, negative changes in the Company's credit rating may affect the credit ratings of the Notes.

**Floating Rate Notes Are, By Their Nature, Uncertain**

Investments in Floating Rate Notes entail risks not associated with investments in Fixed Rate Notes. The resetting of the applicable rate on a Floating Rate Note may result in a lower interest rate as compared to a Fixed Rate Note issued at the same time. The applicable rate on a Floating Rate Note will

fluctuate in accordance with fluctuations in the instrument or obligation or other measure on which the applicable rate is based, which in turn may fluctuate and be affected by a number of interrelated factors, including economic, financial and political events over which the Company has no control.

**The Notes May Be Subject to Early Redemption**

Depending on the terms of the Notes, the Company may have the right to redeem them, or the Notes may be automatically redeemable under some circumstances. If the Notes are redeemed, depending on the market conditions at the time of redemption, a holder of Notes may not be able to reinvest the redemption proceeds in a security with a comparable return.

## LEGAL MATTERS

Certain legal matters in connection with any offering hereunder will be passed upon by Torys LLP for the Company and by Blake, Cassels & Graydon LLP for the Dealers. The partners and associates of Torys LLP and Blake, Cassels & Graydon LLP beneficially own, directly or indirectly, less than one percent of the securities of the Company or any associate or affiliate of the Company.

## AUDITORS, REGISTRAR AND TRANSFER AGENT

The external auditor of the Company is Ernst & Young LLP, Chartered Professional Accountants, located at 100 Adelaide Street West, PO Box 1, Toronto, Ontario M5H 0B3. Ernst & Young LLP has been the Company's auditors since OPG was formed in 1999, and is independent in accordance with the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario.

Registers for the registration and transfer of the Notes issued in registered form are kept at the principal offices of the Transfer Agent in the City of Toronto.

## PURCHASERS' STATUTORY AND CONTRACTUAL RIGHTS

Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission, revision of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province for the particulars of these rights or consult with a legal adviser.

## AGENT FOR SERVICE OF PROCESS IN CANADA

William A. Coley, John Herron, Jim Reinsch and James Sheppard, directors of the Company, reside outside of Canada. Messrs. Coley, Herron, Reinsch and Sheppard have appointed Ontario Power Generation Inc., 700 University Avenue, Toronto, Ontario, M5G 1X6, Canada, as agent for service of process in Canada. Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process.

## CERTIFICATE OF ONTARIO POWER GENERATION INC.

Dated: September 1, 2017

This short form prospectus, together with the documents incorporated in this short form prospectus by reference, will, as of the date of the last supplement to this short form prospectus relating to the securities offered by this short form prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus and the supplement(s) as required by the securities legislation of all of the provinces of Canada.

(Signed) Jeffrey Lyash
President and Chief Executive Officer

(Signed) Ken Hartwick
Chief Financial Officer and Senior Vice President – Finance

On behalf of the Board of Directors:

(Signed) Bernard Lord
Director

(Signed) George Lewis
Director

## CERTIFICATE OF DEALERS

Dated: September 1, 2017

To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this short form prospectus by reference will, as of the date of the last supplement to this short form prospectus relating to the securities offered by this short form prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus and the supplement(s) as required by the securities legislation of all the provinces of Canada.

| **BMO Nesbitt Burns Inc.** | **TD Securities Inc.** |
|---|---|
| By: (Signed) Laith Qamheiah | By: (Signed) Patrick Scace |

| **Goldman Sachs Canada Inc.** | **CIBC World Markets Inc.** | **Desjardins Securities Inc.** | **HSBC Securities (Canada) Inc.** |
|---|---|---|---|
| By: (Signed) Luke Gordon | By: (Signed) Scott Burrows | By: (Signed) Ryan Godfrey | By: (Signed) David Loh |

| **Laurentian Bank Securities Inc.** | **National Bank Financial Inc.** | **RBC Dominion Securities Inc.** | **Scotia Capital Inc.** |
|---|---|---|---|
| By: (Signed) Thomas Berky | By: (Signed) Tushar Kittur | By: (Signed) Robert M. Brown | By: (Signed) Greg Lawrence |

**From:** Egberts, Adam
**To:** "john.s.lee@opg.com"; "ken.hartwick@opg.com"; "OPG - Treasury Group,"; Mike Manning; "Sheen.Liu@opg.com"; Kevin Shvarts; Linda Smith; "ken.ryfa@opg.com"; Brett Kichiy; "j.hahnparker@opg.com"; "matthew.go@opg.com"; "stuart.preston@opg.com"; "Sheen.Liu@opg.com"
**Cc:** Brown, Rob; Egberts, Adam; Wetmore, Jamie; Schoroth, Joseph; Murray, Tim
**Subject:** OPG Weekly Pricing
**Date:** Monday, October 23, 2017 7:18:01 PM
**Attachments:** image003.png
image004.png
image005.png
image006.png
image007.png
header.htm
17-10-23 Lower Mattagamy Energy LP Pricing.pdf
17-10-23 OPG Weekly Pricing - vRBC.xlsx
17-10-23 New Issue Summary.pdf

---

Canadian Debt Capital Markets

# DCM Weekly Market Update

Monday, October 23, 2017

Activity in the corporate primary market moderated last week amidst earnings season, with three issuers accessing the market for ~C$930 million; last week's transactions brought 2017 year-to-date volume to C$98.4 billion, a C$13.1 billion, or ~15%, increase versus the same period last year. Highlighting last week's supply, Ford Auto Securitization Trust ("FAST") priced a successful ~C$530 million multi-tranche ABS offering, which represented Ford's second Canadian retail auto loan ABS transaction in 2017; RBC acted as the structuring lead manager and joint bookrunner on the transaction. In addition, continuing on the recent momentum in the High Yield space, CES Energy Solutions priced a C$300 million 7NC3 offering, capitalizing on favourable demand dynamics in the high yield energy space to opportunistically complete a transaction that had initially been marketed in the Spring. Rounding out the week's supply, CHIP Mortgage Trust priced a C$100 million 3-year floating rate note offering. On the marketing front, RBC Capital Markets completed a fixed income roadshow on behalf of Real Estate Asset Liquidity Trust ("REAL-T"), which took place on October 18th-20th. Looking ahead, market tone and investor demand remain favourable for new issuance while volume is expected to be light heading into bank fiscal year-end.

The secondary market was active last week as earnings releases helped fuel trading activity. On the week, there was some good activity in deposit notes with a slight buying bias while there was some sizeable two-way trading flow in telcos and utilities in the belly and the long-end of the curve. Overall, corporate credit spreads closed generically 1bp tighter. Also of note on the investor side, IGM Financial Inc. announced the merger of its two investment functions Investors Group and Mackenzie Investments. The portfolio management services will now be handled out of Mackenzie, while both entities will maintain differentiated funds and brands; the combined fixed income asset under management will total ~C$36 billion.

The government market continues to absorb steady volumes with ~C$1 billion pricing across 3 transactions. PSP Capital Inc. came to market with a C$500 million 3-year re-opening, Province of New Brunswick printed a C$400 million 10-year re-opening, and First Nations Finance Authority completed a C$126 million 10-year new issue for its first offering since June 2016. In the secondary market, flows remained modest with the prevailing trend remaining client buying of longs. Provincials closed the week ~0.5-1bp tighter, while CMBs ended relatively unchanged.

## EQUITY MARKET UPDATE

North American equity markets performed well on the week as earnings season and economic data drove markets into record territory. South of the border, equity markets were poised to finish their sixth straight week of gains. In addition to corporate earnings, markets advanced as optimism around tax reform increased following the Senate's approval of a $4 trillion budget, a key step toward the Republican's goal to pass their tax plan this year. On the week, the Dow Jones and the S&P500 both ended the week higher by 2.0% and 0.9%, respectively. In Canada, the TSX ended the week 0.3% higher as the energy sector put pressure on the index mid-week following the publication of a report indicating that oil demand could be softer than expected despite supply disruptions in Iraq. However, the index rebounded to end the week, with financials leading the charge. In commodities, oil continued to climb above $50 to $51.47 while gold prices fell $23.35 to end the week at $1,280.47. In currencies, the Canadian dollar depreciated 1.3% against the US greenback to 1.2627 USDCAD.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,857 | ▲ | 0.3% |
| DJA | 23,329 | ▲ | 2.0% |
| S&P 500 | 2,575 | ▲ | 0.9% |
| NASDAQ | 6,629 | ▲ | 0.4% |
| Oil | $51.47 | ▲ | $0.02 |
| Gold | $1,280.47 | ▼ | $23.35 |
| USDCAD | 1.2627 | ▲ | 1.3% |

## CANADIAN NEW ISSUES

*Corporates*

**Mon, Oct. 16 – CHIP Mortgage Trust -** C$100 million 3-year floating rate note offering at CDOR + 130bps

**Tue, Oct. 17 - Ford Auto Securitization Trust -** C$529.85 million multi-tranche ABS offering

**Tue, Oct. 17 - CES Energy Solutions (B/B/-) -** C$300 million 6.375% 7NC3-year senior unsecured notes

Governments

**Tue, Oct. 17 - Province of New Brunswick (A(H)/Aa2/A+) –** C$400 million 2.350% 10-year re-opening at GoC +80 bps and re-offer yield of 2.829%

**Thur, Oct. 18 - First Nations Finance Authority (-/A2/A-) –** C$126 million 3.050% 10-year offering at GoC +107 bps

**Thur, Oct. 18 - PSP Capital Inc. (AAA/Aaa/AAA) - C$500 million re-opening of 3.03% 2020 Series 5 Notes at GoC+34bps**

## NORTH AMERICAN RATES UPDATE

North American government yields were mixed on the week amid central banks activity and mixed economic data; U.S. yields were partly driven by economic data, although investors were also reactive to indications on who could be the next appointed Federal Reserve Chair. President Trump is expected to appoint the next Fed chair before November 3rd, with shortlisted candidates including current Fed chair Janet Yellen, Jerome Powell, John Taylor, Kevin Warsh and Gary Cohn. The latest report from Politico states that the White House is leaning towards Powell; Powell's monetary policy stance is similar to Yellen and has expressed clear intent to raise rates at a sustained and gradual pace, while favoring de-regulation. On the week, the US Treasury curve ended the week 8-12bps higher. In Canada, yields were driven by investor risk sentiment and monetary policy expectations. A speech early in the week by BoC Governor Poloz drove yields lower as investors digested dovish comments regarding expectations for lower growth in the coming months; current market expectation of a rate hike by year-end currently sits at 40%. Overall, the GoC curve ended the week steeper with the 2-year yield ending 6bps lower while the rest of the curve fell 1-2 bps.

**GoC**

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.48% | ▼ 6 |
| 5yr | 1.70% | ▼ 2 |
| 10yr | 2.03% | ▼ 1 |
| 30yr | 2.37% | ▼ 2 |

**UST**

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.58% | ▲ 8 |
| 5yr | 2.02% | ▲ 12 |
| 10yr | 2.39% | ▲ 11 |
| 30yr | 2.90% | ▲ 9 |

## MARKET IMPLIED BOC RATES

| Meeting | Implied Rate |
|---|---|
| October 25, 2017 | 1.0206 |
| December 6, 2017 | 1.1110 |
| January 17, 2018 | 1.2400 |

## SWAPS

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.50 | ▲ 2.00 |
| 3yr | 39.75 | ▲ 1.75 |
| 5yr | 38.75 | ▲ 0.50 |
| 7yr | 35.75 | ▲ 1.25 |
| 10yr | 31.00 | ▲ 2.00 |
| 30yr | 20.75 | ▲ 2.75 |

## LOOKING AHEAD

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Mon, Oct 23 | Wholesale Trade Sales MoM | -- | 1.5% |
| Wed, Oct 25 | Bank of Canada Rate Decision | 1.0% | 1.0% |
| **US Economic Data** | | | |
| Wed, Oct 25 | MBA Mortgage Applications | -- | 3.6% |
| Wed, Oct 25 | Durable Goods Orders | 1.3% | 2.0% |
| Wed, Oct 25 | New Home Sales | 550k | 560k |
| Thu, Oct 26 | Initial Jobless Claims | -- | 222k |
| Fri, Oct 27 | GDP Annualized QoQ | 2.5% | 3.1% |
| Fri, Oct 27 | U. of Mich. Sentiment | 101.0 | 101.1 |
| **International Economic Data** | | | |
| Wed, Oct 25 | UK GDP QoQ | 0.3% | 0.3% |
| Thu, Oct 26 | ECB Main Refinancing Rate | -- | 0.0% |
| Thu, Oct 26 | France Consumer Confidence | 101 | 101 |

## SELECTED COMPANIES REPORTING THIS WEEK

**Canada**

Air Canada, Cameco, Canadian National Railway, Canadian Utilities, Capital Power, Celestica, Constellation Software, Crescent Point Energy, First National Financial, Husky Energy, IMAX, Imperial Oil, Maple Leaf Foods, Precision Drilling, Shaw Communications, Suncor Energy, Supreme Pharmaceuticals, Taseko Mines, Teck Resources, Western Energy Services, Yamana Gold

**US**

3M Co, Alphabet, Altria Group, Amazon.com, Amgen, AT&T, Baxter International, Boeing, Bristol-Myers Squibb, Capital One Financial, Caterpillar, Celgene, Coca-Cola, Comcast, ConocoPhillips, Ford Motor, General Dynamics, General Motors, Gilead Sciences, Intel Corp, Kimberly-Clark, Lockheed Martin, McDonald's, McKesson, Microsoft, PACCAR, Praxair, S&P Global, Sherwin-Williams, Sirius XM Holdings, T-Mobile US, Union Pacific, United Parcel Service, United Technologies, Valero Energy, Visa, Walgreens Boots Alliance, Waste Management
Regards,

**Rob Brown**
**Co-Head, Debt Capital Markets | RBC Capital Markets**
(416) 842-5506
rob.brown@rbccm.com
**Jamie Wetmore**
**Managing Director, Debt Capital Markets | RBC Capital Markets**
(416) 842-6452
jamie.wetmore@rbccm.com
**Adam Egberts**
**Associate, Debt Capital Markets | RBC Capital Markets**
(416) 842-2544
adam.egberts@rbccm.com

---

This email is intended only for the use of the individual(s) to whom it is addressed and may be privileged and confidential.
Unauthorised use or disclosure is prohibited. If you receive this e-mail in error, please advise immediately and delete the original message.
This message may have been altered without your or our knowledge and the sender does not accept any liability for any errors or omissions in the message.

Ce courriel est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent.
Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite.
Si vous recevez ce courriel par erreur, veuillez m'en aviser immédiatement, par retour de courriel ou par un autre moyen.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,857 | ▲ | 0.3% |
| DJA | 23,329 | ▲ | 2.0% |
| S&P 500 | 2,575 | ▲ | 0.9% |
| NASDAQ | 6,629 | ▲ | 0.4% |
| Oil | $51.47 | ▲ | $0.02 |
| Gold | $1,280.47 | ▼ | $23.35 |
| USDCAD | 1.2627 | ▲ | 1.3% |

## GoC

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.48% | ▼ 6 |
| 5yr | 1.70% | ▼ 2 |
| 10yr | 2.03% | ▼ 1 |
| 30yr | 2.37% | ▼ 2 |

## UST

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.58% | ▲ 8 |
| 5yr | 2.02% | ▲ 12 |
| 10yr | 2.39% | ▲ 11 |
| 30yr | 2.90% | ▲ 9 |

| Meeting | Implied Rate |
|---|---|
| October 25, 2017 | 1.0206 |
| December 6, 2017 | 1.1110 |
| January 17, 2018 | 1.2400 |

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.50 | ▲ 2.00 |
| 3yr | 39.75 | ▲ 1.75 |
| 5yr | 38.75 | ▲ 0.50 |
| 7yr | 35.75 | ▲ 1.25 |
| 10yr | 31.00 | ▲ 2.00 |
| 30yr | 20.75 | ▲ 2.75 |

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Mon, Oct 23 | Wholesale Trade Sales MoM | -- | 1.5% |
| Wed, Oct 25 | Bank of Canada Rate Decision | 1.0% | 1.0% |
| **US Economic Data** | | | |
| Wed, Oct 25 | MBA Mortgage Applications | -- | 3.6% |
| Wed, Oct 25 | Durable Goods Orders | 1.3% | 2.0% |
| Wed, Oct 25 | New Home Sales | 550k | 560k |
| Thu, Oct 26 | Initial Jobless Claims | -- | 222k |
| Fri, Oct 27 | GDP Annualized QoQ | 2.5% | 3.1% |
| Fri, Oct 27 | U. of Mich. Sentiment | 101.0 | 101.1 |
| **International Economic Data** | | | |
| Wed, Oct 25 | UK GDP QoQ | 0.3% | 0.3% |
| Thu, Oct 26 | ECB Main Refinancing Rate | -- | 0.0% |
| Thu, Oct 26 | France Consumer Confidence | 101 | 101 |

RBC Capital Markets®

# Lower Mattagamy Energy LP

**DBRS: A(high)  Moody's: A2**

## C$ New Issue Indicative Pricing as at: October 23, 2017

| Term | 2 Year | 3 Year | 5 Year | 7 Year | 10 Year | 30 Year |
|---|---|---|---|---|---|---|
| Canada Bond Benchmark | Interp (1.75% 1SEP19 & 1.5% 1MAR20) | Interp (0.75% 1SEP20 & 0.75% 1MAR21) | Interp (1% 1SEP22 & 1.5% 1JUN23) | Interp (2.5% 1JUN24 & 2.25% 1JUN25) | Interp (1% 1JUN27 & 5.75% 1JUN29) | 2.75% 1DEC48 |
| Canada Yield (Bid) | 1.463% | 1.540% | 1.712% | 1.865% | 2.046% | 2.373% |
| **Credit Spread (bps)** | **47** | **55** | **66** | **78** | **93** | **133** |
| Offering Yield | 1.933% | 2.090% | 2.372% | 2.645% | 2.976% | 3.703% |
| **Re-Offer Spread to BAs** | **10** | **15** | **29** | **47** | **65** | **114** |
| **Re-Offer Spread to USD LIBOR** | **32** | **33** | **40** | **52** | **66** | **134** |

## Hedging future GoC levels with Bond Rate-Lock

| Bond Benchmark | CAN 1.75% 1SEP19 | CAN 0.75% 1SEP20 | CAN 1% 1SEP22 | CAN 2.5% 1JUN24 | CAN 1% 1JUN27 | CAN 2.75% 1DEC48 |
|---|---|---|---|---|---|---|
| Spot Level | 1.455% | 1.529% | 1.700% | 1.837% | 2.028% | 2.373% |
| For 3 months to 24-Jan-18 | 1.574% (+12 bps) | 1.610% (+8 bps) | 1.756% (+6 bps) | 1.885% (+5 bps) | 2.065% (+4 bps) | 2.392% (+2 bps) |
| For 6 months to 24-Apr-18 | 1.814% (+36 bps) | 1.749% (+22 bps) | 1.841% (+14 bps) | 1.954% (+12 bps) | 2.115% (+9 bps) | 2.417% (+4 bps) |
| For 12 months to 24-Oct-18 | 2.771% (+132 bps) | 2.171% (+64 bps) | 2.059% (+36 bps) | 2.124% (+29 bps) | 2.233% (+21 bps) | 2.471% (+10 bps) |

## Selected Secondary Trading Comparables

| | | | | | Bid Spread | |
|---|---|---|---|---|---|---|
| Issue | Amount (C$MM) | Benchmark | Remaining Term (Maturity / Par Call) | Price (Maturity / Par Call) | vs. Bond | vs. Curve |
| 2.228% due 23-Oct-17 | 200 | #N/A | 0.0 / - | #N/A | #N/A | #N/A |
| 4.331% due 18-May-21 | 225 | CAN 3 1/4 06/01/21 | 3.6 / - | $107.41 (M) | 63 | 63 |
| 3.416% due 20-Jun-24 | 200 | CAN 2 1/2 06/01/24 | 6.7 / - | $104.97 (M) | 76 | 76 |
| 2.307% due 21-Oct-26 | 220 | CAN 1 1/2 06/01/26 | 9.0 / - | $95.94 (M) | 85 | 83 |
| 5.139% due 18-May-41 | 250 | CAN 2 3/4 12/01/48 | 23.6 / - | $122.51 (M) | 132 | 131 |
| 4.944% due 21-Sep-43 | 200 | CAN 2 3/4 12/01/48 | 25.9 / - | $121.67 (M) | 132 | - |
| 4.176% due 23-Feb-46 | 275 | CAN 2 3/4 12/01/48 | 28.4 / - | $108.32 (M) | 132 | - |
| 4.175% due 23-Apr-52 | 225 | CAN 2 3/4 12/01/48 | 34.5 / - | $109.23 (M) | 132 | - |

*Pricing is indicative and subject to market conditions*

*Swapped equivalent levels and Rate Locks are for illustration purposes only and do not include cost of credit*

| Bank Name | RBC |
|---|---|
| Date | 10/23/2017 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-Year | 10-Year | 5-Year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Sep-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.75% | | | | |
| Benchmark Yield | 2.37% | 2.03% | 1.70% | 1.46% | -0.01% | 0.01% | 0.00% | -0.03% |
| Curve Adjustment (bp) | 0.0 | 1.8 | 1.2 | 0.8 | - | - | 0.100 | 0.200 |
| Spread to GoC Curve (bp) | **156.0** | **111.0** | **81.0** | **62.0** | - | 2.0 | - | - |
| Re-Offered Yield | 3.93% | 3.16% | 2.52% | 2.08% | -0.01% | 0.03% | 0.00% | -0.03% |
| Commission (bp) | 2.9 | 4.7 | 7.5 | 10.3 | (0.0) | 0.0 | (0.0) | (0.0) |
| **All-in Yield** | **3.96%** | **3.20%** | **2.60%** | **2.19%** | **-0.01%** | **0.03%** | **0.00%** | **-0.03%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | 138.0 | 95.0 | 67.0 | 48.0 | 0.0 | -1.0 | -1.0 | 0.0 |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| TransAlta Corp (BBB/BBB-) | | 405.0 | 275.0 | 215.0 | | 0.0 | 0.0 | 0.0 |
| Nova Scotia Power (A(L)/-/BBB+) | 144.0 | 101.0 | 73.0 | 54.0 | 0.0 | -1.0 | -1.0 | -1.0 |
| Bruce Power (BBB/Baa2/BBB) | 210.0 | 155.0 | 105.0 | | 0.0 | 0.0 | 0.0 | |
| EPCOR (A(L)/-/A-) | 135.0 | 94.0 | 67.0 | 49.0 | -3.0 | -2.0 | -1.0 | 0.0 |
| FortisBC (A(L)/Baa1/-) | 138.0 | 98.0 | 71.0 | 53.0 | -2.0 | 0.0 | 1.0 | 2.0 |
| FortisAlberta (A(L)/-/A-) | 134.0 | 94.0 | 67.0 | 49.0 | -3.0 | -1.0 | 0.0 | 1.0 |
| TCPL (A(L)/A3/A-) | 178.0 | 114.0 | 79.0 | 54.0 | -1.0 | -1.0 | -1.0 | -1.0 |

| Secondary Pricing | Remaining Term | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | Bench | Maturity / Call | Bond | Curve | Bench | - | Bond | Curve |
| ONTPOW 3.315 10/04/27 Corp | CAN 1 06/01/27 | 10.0/9.7 (C) | 111.0 | 111.0 | | | -1.0 | -1.0 |

RBC Capital Markets®

**NEW ISSUE SUMMARY** October 16 - October 20, 2017

**CORPORATE NEW ISSUANCE**

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| CHIP Mortgage Trust | 16-Oct-17 | (AAA/-/-) | 100 | 20-Oct-20 | 2.730% | 3mCDOR+130 | CIBC |
| Canadian Energy Services & Technology Corp. | 17-Oct-17 | - / - /B | 300 | 21-Oct-24 | 6.375% | +453.10 | NBF / SCI |
| Ford Auto Securitization Trust | 17-Oct-17 | - / - / - | 11 | 15-Apr-25 | 2.955% | +130 | RBC CM / CIBC WM / SCI |
| Ford Auto Securitization Trust | 17-Oct-17 | AA(high)/ - /AA+ | 16 | 15-Jun-23 | 1.650% | +50 | RBC CM / CIBC WM / SCI |
| Ford Auto Securitization Trust | 17-Oct-17 | AAA/ - /AAA | 168 | 15-Oct-19 | 1.000% | - | CIBC WM / RBC CM / SCI |
| Ford Auto Securitization Trust | 17-Oct-17 | AAA/ - /AAA | 117 | 15-Mar-23 | 1.650% | +50 | RBC CM / CIBC WM / SCI |
| Ford Auto Securitization Trust | 17-Oct-17 | AAA/ - /AAA | 218 | 15-Nov-21 | 1.650% | +50 | RBC CM / CIBC WM / SCI |
| **TOTAL** | | | **930 MM** | | | | |

**GOVERNMENT NEW ISSUANCE**

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| Province of New Brunswick | 17-Oct-17 | A(H)/Aa2/A+) | 400 | 14-Aug-27 | 2.350% | +90 | CIBC / RBCCM / TD / SCI / BMO |
| First Nations Finance Authority | 18-Oct-17 | -/A2/A- | 126 | 1-Jun-28 | 3.050% | +107 | NBF / CIBC / LAUREN / RBC / BMO / SCI / TD |
| PSP Capital Inc. | 18-Oct-17 | AAA/Aaa/AAA | 500 | 22-Oct-20 | 3.030% | +34 | TDSI / BMO CM / CIBC WM |
| **TOTAL** | | | **1,026 MM** | | | | |

**From:** Egberts, Adam
**To:** "john.s.lee@opg.com"; "ken.hartwick@opg.com"; "OPG - Treasury Group,"; Mike Manning; "Sheen.Liu@opg.com"; Kevin Shvarts; Linda Smith; "ken.ryfa@opg.com"; Brett Kichiy; "j.hahnparker@opg.com"; "matthew.go@opg.com"; "stuart.preston@opg.com"; "Sheen.Liu@opg.com"
**Cc:** Brown, Rob; Egberts, Adam; Wetmore, Jamie; Schoroth, Joseph; Murray, Tim
**Subject:** OPG Weekly Pricing
**Date:** Tuesday, October 10, 2017 6:42:45 PM
**Attachments:** image003.png
image004.png
image005.png
image006.png
image007.png
header.htm
17-10-10 Lower Mattagamy Energy LP Pricing.pdf
17-10-10 OPG Weekly Pricing - vRBC.xlsx
17-10-10 New Issue Summary.pdf

---

Canadian Debt Capital Markets

# DCM Weekly Market Update

Tuesday, October 10, 2017

The Canadian corporate primary market remained active last week with 5 transactions priced for C$2.7 billion across 9 tranches. Of note, issuance was comprised primarily of highly rated products from a wide range of sectors and tenors. Last week's transactions were all met with strong investor receptivity as evidenced by orderbooks that were multiple-times oversubscribed, attractive pricing and good secondary market performance. The Maple market continued to be topical last week with The Walt Disney Company pricing a C$1.25 billion 7-year offering at the tight-end of guidance which was upsized from the initial target. The offering represented Walt Disney inaugural transaction in the Canadian market and capitalized on continued strength of the Maple market which has absorbed C$14.7 billion of supply YTD; RBC acted as joint Bookrunner on the transaction. Later on the week, Ryerson University priced an ultra-long with a C$130 million 40-year offering which was met by strong demand from investors; the offering represented the third bond transaction in the university space this year. In the securitization space, Eagle Credit Card Trust, the securitization vehicle for President's Choice Bank, priced an RBC-led C$250 million ABS offering on the heels of an investor call the prior week. Looking ahead, primary market activity is expected to continue as investor sentiment remains constructive for new supply and the forward calendar remains robust for the coming weeks.

Secondary markets were fairly active last week as new issue fueled the trading activity in their respective sectors; flows were balanced and well diversified across sectors and tenors with notable trading activity in financials, utilities and telcos. On the week, credit spreads generically ended the week tighter.

The Government market had another steady week with C$900 million in supply as Province of Saskatchewan completed a C$400 million 10-year re-opening with a C$100 million carve-out, and Hydro Quebec completed its second deal of the fall with a C$500 million 38-year re-opening. Of note, the market has now seen 5 carve-outs for C$1.5 billion in the last 3 weeks versus 7 for C$1.8 billion during the first 8 months of the year. In secondaries both provincial and CMB trading volumes remained modest through the week. CMBs are ending the week 0.5-1bp tighter while provincials closed 0.5-1bp tighter in 10s and longs.

## EQUITY MARKET UPDATE

North American equity markets performed well on the week with price action largely influenced

by economic releases, continued optimism on the topic of tax reform, and central bank changes. In the U.S., the S&P 500 and Dow Jones ended the week higher by 1.2% and 1.6% respectively. U.S. equities performed well throughout the first half of the week on the back of positive economic data including ISM manufacturing, initial jobless claims and trade balance. However, to end the week, U.S. nonfarm payrolls came out at -33,000 jobs (vs. expectations of 80,000) sending equities lower on the day. The decline in payrolls was largely impacted by Hurricane Harvey and Hurricane Irma, which stopped 1.5 million people from working. Of note, the unemployment rate dropped to a new 16-year low and labour participation increased, indicating that the U.S. labour market is holding up well. In Canada, markets were brought higher led by positive sentiment in the Canadian economy. During the back end of the week, the TSX fell after 6 consecutive days of gains, as oil and technology names weighed on the index; of note, oil slid below $50/bbl on the news of increasing supply. The S&P TSX rose 0.6% on the week while oil fell $2.38 to $49.29/bbl and gold prices ended the week $3.07 lower to $1,276.68. In currencies, the Canadian dollar depreciated 0.5% against the US greenback to end the week at 1.2529USDCAD.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,728 | ▲ | 0.6% |
| DJA | 22,774 | ▲ | 1.6% |
| S&P 500 | 2,549 | ▲ | 1.2% |
| NASDAQ | 6,590 | ▲ | 1.5% |
| Oil | $49.29 | ▼ | $2.38 |
| Gold | $1,276.68 | ▼ | $3.07 |
| USDCAD | 1.2529 | ▲ | 0.5% |

## CANADIAN NEW ISSUES

*Corporates*

**Mon, Oct 2 - Eagle Credit Card Trust (AAA/-/-)** – C$250 million ABS multi-tranche offering

**Mon, Oct 2 - AltaGas Ltd. (BBB/-/BBB) –** C$450mm dual-tranche offering consisting of C$200mm 3.98% 10-year senior unsecured debenture at GoC +185bps and C$250mm 4.99% 30-year senior unsecured note at GoC +250bps

**Tues, Oct 3 - The Walt Disney Company (-/A2/A+)** – C$1.25 billion 2.758% 7-year senior unsecured notes at GoC+81bps

**Tues, Oct 3 - Toyota Credit Canada (AA(low)/Aa3/AA-) –**C$600 million dual-tranche offering consisting of C$200 million 3-year FRN at 3mCDOR +30bps and C$400 million 2.620% 5-year at GoC +84bps

**Thurs, Oct 5- Ryerson University (-/Aa2/-)** – C$130 million 3.768% 40-year senior unsecured notes at CAN 2.75% 1Dec48 + 128bps

*Governments*

**Mon, Oct 2 - Province of Saskatchewan (AA/Aaa/AA)** – C$400 million 2.650% 10-year re-opening at GoC +72.0 bps

**Tues, Oct 3 - Hydro-Quebec (A(high)/Aa2/AA-)** - C$500 million 4.000% 37-year re-opening at GoC +79.5 bps

## NORTH AMERICAN RATES UPDATE

North American bond yields ended the week higher on both side of the border amid central banks expectations and positive economic indicators. In the US, the treasury curve increased by 2-3 bps across the curve. Last week's movements in yields was partly impacted by market speculations of a newly appointed Fed chair to replace Janet Yellen; expectations point to President Trump likely appointing a new Fed chair by month-end. Current market shortlisting includes former Fed Governor Kevin Warsh, who has been known to take a more hawkish stance and believes that economic growth could be materially boosted by tax cuts. During the back half of the week, yields were marginally higher following positive economic releases coupled with ongoing tax reform conversations. In Canada, BoC deputy Governor Sylvain Leduc stated that Canadian economic growth is expected to decline over the next few quarters, but productivity may lead to greater potential output, sending the yield curve 1-2 bps tighter. On the week, government yields rose 3bps across the curve on the week except for the long-end which ended the week 2bps higher.

GoC

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.55% | ▲ 3 |
| 5yr | 1.78% | ▲ 3 |
| 10yr | 2.13% | ▲ 3 |
| 30yr | 2.49% | ▲ 2 |

UST

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.50% | ▲ 2 |
| 5yr | 1.96% | ▲ 2 |
| 10yr | 2.36% | ▲ 3 |
| 30yr | 2.89% | ▲ 3 |

**MARKET IMPLIED BOC RATES**

Market Implied Rates

| Meeting | Implied Rate |
|---|---|
| October 25, 2017 | 1.0578 |
| December 6, 2017 | 1.1750 |
| January 17, 2018 | 1.3250 |

**SWAPS**

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.25 | unch |
| 3yr | 38.50 | unch |
| 5yr | 36.50 | ▲ 0.50 |
| 7yr | 32.75 | ▲ 0.25 |
| 10yr | 27.25 | ▲ 0.25 |
| 30yr | 16.50 | ▼ 0.25 |

**LOOKING AHEAD**

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Tue, Oct 10 | Housing Starts | 211k | 223.2k |
| Tue, Oct 10 | Building Permits MoM | -1.0% | -3.5% |
| Thu, Oct 12 | New Housing Price Index MoM | 0.30% | 0.4% |
| Thu, Oct 12 | New Housing Price Index YoY | -- | 3.8% |
| **US Economic Data** | | | |
| Wed, Oct 11 | MBA Mortgage Applications | -- | -0.40% |
| Wed, Oct 11 | FOMC Meeting Minutes | | |
| Thu, Oct 12 | PPI Final Demand MoM | 0.40% | 0.20% |
| Thu, Oct 12 | Initial Jobless Claims | 251k | 260k |
| Thu, Oct 12 | Continuing Claims | -- | 1938k |
| Fri, Oct 13 | CPI MoM | 0.60% | 0.40% |
| Fri, Oct 13 | CPI YoY | 2.3% | 1.9% |
| Fri, Oct 13 | Retail Sales Advance MoM | 1.60% | -0.20% |
| Fri, Oct 13 | U. of Michigan Sentiment | 95.1 | 95.1 |
| **International Economic Data** | | | |
| Mon, Oct 9 | Japan BoP Current Account Balance | ¥2223.3b | ¥2320.0b |
| Tue, Oct 10 | UK Industrial Production MoM | 0.2% | 0.2% |
| Tue, Oct 10 | France Industrial Production MoM | 0.4% | 0.5% |
| Wed, Oct 11 | Japan PPI YoY | 3.00% | 2.90% |
| Thu, Oct 12 | France CPI YoY | 1.0% | 1.0% |

## SELECTED COMPANIES REPORTING THIS WEEK

**Canada**

Jean Coutu Group, MTY Food Group, Supreme Pharmaceuticals

**US**

Bank of America Corp, BlackRock, Capstone Financial Group, Citigroup, Delta Air Lines, Domino's Pizza, First Horizon National, JPMorgan Chase & Co, Omnicom Group, PNC Financial Services Group, Progressive Corp, Wells Fargo

Regards,

**Rob Brown**
**Co-Head, Debt Capital Markets | RBC Capital Markets**
(416) 842-5506
rob.brown@rbccm.com
**Jamie Wetmore**
**Managing Director, Debt Capital Markets | RBC Capital Markets**
(416) 842-6452
jamie.wetmore@rbccm.com
**Adam Egberts**
**Associate, Debt Capital Markets | RBC Capital Markets**
(416) 842-2544
adam.egberts@rbccm.com

---

This email is intended only for the use of the individual(s) to whom it is addressed and may be privileged and confidential.
Unauthorised use or disclosure is prohibited. If you receive this e-mail in error, please advise immediately and delete the original message.
This message may have been altered without your or our knowledge and the sender does not accept any liability for any errors or omissions in the message.

Ce courriel est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent.
Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite.
Si vous recevez ce courriel par erreur, veuillez m'en aviser immédiatement, par retour de courriel ou par un autre moyen.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,728 | ▲ | 0.6% |
| DJA | 22,774 | ▲ | 1.6% |
| S&P 500 | 2,549 | ▲ | 1.2% |
| NASDAQ | 6,590 | ▲ | 1.5% |
| Oil | $49.29 | ▼ | $2.38 |
| Gold | $1,276.68 | ▼ | $3.07 |
| USDCAD | 1.2529 | ▲ | 0.5% |

## GoC

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.55% | ▲ 3 |
| 5yr | 1.78% | ▲ 3 |
| 10yr | 2.13% | ▲ 3 |
| 30yr | 2.49% | ▲ 2 |

## UST

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.50% | ▲ 2 |
| 5yr | 1.96% | ▲ 2 |
| 10yr | 2.36% | ▲ 3 |
| 30yr | 2.89% | ▲ 3 |

## Market Implied Rates

| Meeting | Implied Rate |
|---|---|
| October 25, 2017 | 1.0578 |
| December 6, 2017 | 1.1750 |
| January 17, 2018 | 1.3250 |

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.25 | unch |
| 3yr | 38.50 | unch |
| 5yr | 36.50 | ▲ 0.50 |
| 7yr | 32.75 | ▲ 0.25 |
| 10yr | 27.25 | ▲ 0.25 |
| 30yr | 16.50 | ▼ 0.25 |

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Tue, Oct 10 | Housing Starts | 211k | 223.2k |
| Tue, Oct 10 | Building Permits MoM | -1.0% | -3.5% |
| Thu, Oct 12 | New Housing Price Index MoM | 0.30% | 0.4% |
| Thu, Oct 12 | New Housing Price Index YoY | -- | 3.8% |
| **US Economic Data** | | | |
| Wed, Oct 11 | MBA Mortgage Applications | -- | -0.40% |
| Wed, Oct 11 | FOMC Meeting Minutes | | |
| Thu, Oct 12 | PPI Final Demand MoM | 0.40% | 0.20% |
| Thu, Oct 12 | Initial Jobless Claims | 251k | 260k |
| Thu, Oct 12 | Continuing Claims | -- | 1938k |
| Fri, Oct 13 | CPI MoM | 0.60% | 0.40% |
| Fri, Oct 13 | CPI YoY | 2.3% | 1.9% |
| Fri, Oct 13 | Retail Sales Advance MoM | 1.60% | -0.20% |
| Fri, Oct 13 | U. of Michigan Sentiment | 95.1 | 95.1 |
| **International Economic Data** | | | |
| Mon, Oct 9 | Japan BoP Current Account Balance | ¥2223.3b | ¥2320.0b |
| Tue, Oct 10 | UK Industrial Production MoM | 0.2% | 0.2% |
| Tue, Oct 10 | France Industrial Production MoM | 0.4% | 0.5% |
| Wed, Oct 11 | Japan PPI YoY | 3.00% | 2.90% |
| Thu, Oct 12 | France CPI YoY | 1.0% | 1.0% |

RBC Capital Markets®

# Lower Mattagamy Energy LP

**DBRS: A(high)  Moody's: A2**

## C$ New Issue Indicative Pricing as at: October 10, 2017

| Term | 2 Year | 3 Year | 5 Year | 7 Year | 10 Year | 30 Year |
|---|---|---|---|---|---|---|
| Canada Bond Benchmark | Interp (1.75% 1SEP19 & 1.5% 1MAR20) | Interp (0.75% 1SEP20 & 0.75% 1MAR21) | Interp (1% 1SEP22 & 1.5% 1JUN23) | Interp (2.5% 1JUN24 & 2.25% 1JUN25) | Interp (1% 1JUN27 & 5.75% 1JUN29) | 2.75% 1DEC48 |
| Canada Yield (Bid) | 1.550% | 1.615% | 1.782% | 1.951% | 2.136% | 2.487% |
| **Credit Spread (bps)** | **47** | **55** | **67** | **81** | **95** | **136** |
| Offering Yield | 2.020% | 2.165% | 2.452% | 2.761% | 3.086% | 3.847% |
| **Re-Offer Spread to BAs** | **12** | **16** | **32** | **53** | **71** | **122** |
| **Re-Offer Spread to USD LIBOR** | **33** | **34** | **43** | **60** | **72** | **138** |

## Hedging future GoC levels with Bond Rate-Lock

| Bond Benchmark | CAN 1.75% 1SEP19 | CAN 0.75% 1SEP20 | CAN 1% 1SEP22 | CAN 2.5% 1JUN24 | CAN 1% 1JUN27 | CAN 2.75% 1DEC48 |
|---|---|---|---|---|---|---|
| Spot Level | 1.544% | 1.604% | 1.772% | 1.922% | 2.118% | 2.487% |
| For 3 months to 11-Jan-18 | 1.994% (+45 bps) | 1.836% (+23 bps) | 1.888% (+12 bps) | 2.009% (+9 bps) | 2.182% (+6 bps) | 2.515% (+3 bps) |
| For 6 months to 11-Apr-18 | 2.894% (+135 bps) | 2.173% (+57 bps) | 2.029% (+26 bps) | 2.110% (+19 bps) | 2.252% (+13 bps) | 2.545% (+6 bps) |
| For 12 months to 11-Oct-18 | 29.312% (+2777 bps) | 3.500% (+190 bps) | 2.412% (+64 bps) | 2.366% (+44 bps) | 2.422% (+30 bps) | 2.611% (+12 bps) |

## Selected Secondary Trading Comparables

| | | | | | Bid Spread | |
|---|---|---|---|---|---|---|
| Issue | Amount (C$MM) | Benchmark | Remaining Term (Maturity / Par Call) | Price (Maturity / Par Call) | vs. Bond | vs. Curve |
| 2.228% due 23-Oct-17 | 200 | CAN 0 1/4 11/01/17 | 0.0 / - | $100.02 (M) | 33 | 0 |
| 4.331% due 18-May-21 | 225 | CAN 3 1/4 06/01/21 | 3.6 / - | $107.15 (M) | 64 | 64 |
| 3.416% due 20-Jun-24 | 200 | CAN 2 1/2 06/01/24 | 6.7 / - | $104.35 (M) | 77 | 77 |
| 2.307% due 21-Oct-26 | 220 | CAN 1 1/2 06/01/26 | 9.0 / - | $94.90 (M) | 88 | 86 |
| 5.139% due 18-May-41 | 250 | CAN 2 3/4 12/01/48 | 23.6 / - | $120.10 (M) | 135 | 135 |
| 4.944% due 21-Sep-43 | 200 | CAN 2 3/4 12/01/48 | 26.0 / - | $119.09 (M) | 135 | - |
| 4.176% due 23-Feb-46 | 275 | CAN 2 3/4 12/01/48 | 28.4 / - | $105.84 (M) | 135 | - |
| 4.175% due 23-Apr-52 | 225 | CAN 2 3/4 12/01/48 | 34.6 / - | $106.45 (M) | 135 | - |

*Pricing is indicative and subject to market conditions*

*Swapped equivalent levels and Rate Locks are for illustration purposes only and do not include cost of credit*

| Bank Name | RBC |
|---|---|
| Date | 10/10/2017 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-Year | 10-Year | 5-Year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Sep-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.75% | | | | |
| Benchmark Yield | 2.49% | 2.12% | 1.77% | 1.54% | -0.02% | -0.01% | -0.01% | 0.00% |
| Curve Adjustment (bp) | 0.0 | 1.8 | 1.0 | 0.6 | - | 0.20 | 0.200 | 0.200 |
| Spread to GoC Curve (bp) | **156.0** | **109.0** | **82.0** | **62.0** | - | - | - | - |
| Re-Offered Yield | 4.05% | 3.23% | 2.60% | 2.17% | -0.02% | -0.01% | -0.01% | 0.01% |
| Commission (bp) | 2.9 | 4.7 | 7.5 | 10.3 | (0.0) | (0.0) | (0.0) | 0.0 |
| **All-in Yield** | **4.08%** | **3.27%** | **2.68%** | **2.27%** | **-0.02%** | **-0.01%** | **-0.01%** | **0.01%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | 138.0 | 97.0 | 69.0 | 49.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| TransAlta Corp (BBB/BBB-) | | 405.0 | 275.0 | 215.0 | | 0.0 | 0.0 | -5.0 |
| Nova Scotia Power (A(L)/-/BBB+) | 144.0 | 102.0 | 75.0 | 55.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Bruce Power (BBB/Baa2/BBB) | 210.0 | 155.0 | 105.0 | | 0.0 | 0.0 | 0.0 | |
| EPCOR (A(L)/-/A-) | 138.0 | 97.0 | 69.0 | 49.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FortisBC (A(L)/Baa1/-) | 140.0 | 98.0 | 70.0 | 52.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FortisAlberta (A(L)/-/A-) | 137.0 | 96.0 | 67.0 | 49.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TCPL (A(L)/A3/A-) | 178.0 | 118.0 | 85.0 | 60.0 | -2.0 | -2.0 | 0.0 | 0.0 |

| Secondary Pricing | Remaining Term | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | Bench | Maturity / Call | Bond | Curve | Bench | - | Bond | Curve |
| ONTPOW 3.315 10/04/27 Corp | CAN 1 06/01/27 | 10.0/9.7 (C) | 112.0 | 112.0 | | | 0.0 | 0.0 |

RBC Capital Markets®

**NEW ISSUE SUMMARY** October 2 - October 6, 2017

**CORPORATE NEW ISSUANCE**

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| Altagas Ltd. | 02-Oct-17 | BBB/ - /BBB | 200 | 04-Oct-27 | 3.980% | +185 | CIBC WM / BMO CM / DJIA / HSBC Sec / RBC / SCI |
| Altagas Ltd. | 02-Oct-17 | BBB/ - /BBB | 250 | 04-Oct-47 | 4.990% | +250 | CIBC WM / BMO CM / DJIA / HSBC Sec / RBC / SCI |
| Eagle Credit Card Trust | 02-Oct-17 | AAA/ - / - | 233 | 17-Oct-22 | 2.631% | +85 | CIBC WM / BMO CM / RBC CM |
| Eagle Credit Card Trust | 02-Oct-17 | BBB/ - / - | 9 | 17-Oct-22 | 4.081% | +230 | CIBC WM / BMO CM / RBC CM |
| Eagle Credit Card Trust | 02-Oct-17 | A/ - / - | 9 | 17-Oct-22 | 3.331% | +155 | CIBC WM / BMO CM / RBC CM |
| Ryerson University | 05-Oct-17 | - /Aa2/ - | 130 | 11-Oct-57 | 3.768% | +128 | RBC CM / BMO / CIBC / NBF / SCI / TDSI |
| The Walt Disney Company | 03-Oct-17 | - /A2/A+ | 1,250 | 07-Oct-24 | 2.758% | +81 | HSBC Sec / RBC CM / TDSI |
| Toyota Credit Canada Inc | 03-Oct-17 | - /Aa3/AA- | 400 | 11-Oct-22 | 2.620% | +84 | BMO CM / SCI / TDSI / CIBC |
| Toyota Credit Canada Inc | 03-Oct-17 | - /Aa3/AA- | 200 | 13-Oct-20 | 0.300% | +30 | BMO CM / SCI / TDSI / CIBC |
| **TOTAL** | | | **2,680 MM** | | | | |

**GOVERNMENT NEW ISSUANCE**

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| Province of Saskatchwan | 02-Oct-17 | AA/Aaa/AA | 400 | 2-Jun-27 | 2.650% | +81 | CIBC |
| Hydro-Quebec | 03-Oct-17 | A(H)/Aa2/AA- | 500 | 15-Feb-45 | 4.000% | +80 | NBF / CIBC / TDSI / BMO / DJIA / RBC / SCI / HSBC Sec |
| **TOTAL** | | | **900 MM** | | | | |

| | |
|---|---|
| **From:** | Egberts, Adam |
| **To:** | "john.s.lee@opg.com"; "ken.hartwick@opg.com"; "OPG - Treasury Group,"; Mike Manning; "Sheen.Liu@opg.com"; Kevin Shvarts; Linda Smith; "ken.ryfa@opg.com"; Brett Kichiy; "j.hahnparker@opg.com"; "matthew.go@opg.com"; "stuart.preston@opg.com"; "Sheen.Liu@opg.com"; Ricky Lai |
| **Cc:** | Brown, Rob; Egberts, Adam; Wetmore, Jamie; Schoroth, Joseph; Murray, Tim |
| **Subject:** | OPG Weekly Pricing |
| **Date:** | Monday, October 30, 2017 7:18:07 PM |
| **Attachments:** | image003.png<br>image004.png<br>image005.png<br>image006.png<br>image007.png<br>header.htm<br>17-10-30 Lower Mattagamy Energy LP Pricing.pdf<br>17-10-30 OPG Weekly Pricing - vRBC.xlsx<br>17-10-30 New Issue Summary.pdf |

RBC Capital Markets

Canadian Debt Capital Markets

# DCM Weekly Market Update

Monday, October 30, 2017

The Canadian corporate primary market was active last week with ~C$2.3 billion in aggregate supply across 5 transactions. The highlight of the week was a C$750 million 7-year Maple offering from Goldman Sachs Group for which RBC was a Joint Bookrunner. The transaction represents Goldman's second TLAC eligible fixed/floating senior offering in the Canadian market this year and followed the company's US$7 billion 3-tranche benchmark trade a day earlier. The offering adds to C$14.7 billion of existing Maple supply this year, which continues to be the most active year in Maple issuance since 2007. In the securitization space, Real Estate Asset Liquidity Trust ("REAL-T") priced a ~C$407 million multi-tranche CMBS offering with RBC acting as Structuring Lead Agent and Sole Bookrunner. The transaction marks the first CMBS trade of 2017 and the fifth through the REAL-T platform since its return to the market in 2014. Fortified Trust was also in the market with a ~C$510 million multi-tranche ABS offering. Last on the week, FortisBC Energy printed a C$175 million long offering, and Toromont Industries priced a C$500 million 10-year.

Away from the primary market, RBC hosted a well-attended one-day fixed income non-deal investor update for Dollarama, which featured an investor luncheon and select one-on-one meetings. Also, RBC announced a 3-day fixed income investor roadshow for First Nations ETF LP to take place on October 31 in Montreal and November 1-2 in Toronto as well as a 2-day fixed income investor introduction for Thames Water Utilities Limited on November 2-3 in Montreal and Toronto.

Looking ahead, market tone continues to remain constructive for new issuance with a busy roadshow calendar in place for November.

Secondary trading volumes were active throughout the week with good two way flow across both financial and corporate names. Short-dated deposit notes were actively traded two-way through the week, while the 7-10 year part of the curve was more active later in the week. Among corporates, telcos and utilities saw good two-way flow in the belly of the curve while Maple credits traded on the back of the new issue from Goldman Sachs. On the week, corporate credit spreads generally closed 3 bps tighter across the curve.

Governments continued to see good supply last week with ~C$1.1 billion pricing across 2 transactions. Province of Ontario completed a C$1 billion 5-year, which priced at GoC+42, the tightest 5-year fixed pricing for the Province this government year; Ontario has now borrowed C$26 billion in GY2017/18. In municipals, City of Vancouver completed a 10-year offering for C$85

million for its first offering since 2016. In the secondary market, volumes cooled through the week after heavy flows on Tuesday ahead of the Bank of Canada rate decision. Provincial spreads continued to tighten with the front end 1bp tighter and 10s and 30s 2bps tighter; CMBs also moved 0.5bp tighter on the week.

## EQUITY MARKET UPDATE

North American equity markets were mixed through the week but ended higher as strong corporate earnings, positive economic data releases, and speculation around US President Trump's tax reform lifted markets. The Dow Jones and S&P 500 indexes rose 0.5% and 0.2%, respectively, led by strength from financial and technology shares. Friday's strong US GDP beat was also a major driver with a 3.0% growth figure coming in well above survey of 2.6%. North of the border, the S&P/TSX index also performed well rising 0.6% to close the week with financials accounting for a large portion of the advance, while consumer discretionary also rose and energy shares contributed meaningfully with improving oil markets. In commodities, crude oil futures rose $2.50 to close the week at $53.97, while gold fell $6.76 to end the week at $1,273.71. In currency markets, the Canadian dollar depreciated 1.6% versus the greenback to close at 1.2826 USDCAD.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,954 | ▲ | 0.6% |
| DJA | 23,434 | ▲ | 0.5% |
| S&P 500 | 2,581 | ▲ | 0.2% |
| NASDAQ | 6,701 | ▲ | 1.1% |
| Oil | $53.97 | ▲ | $2.50 |
| Gold | $1,273.71 | ▲ | $6.76 |
| USDCAD | 1.2826 | ▲ | 1.6% |

## CANADIAN NEW ISSUES

*Corporates*

**Tue, Oct 24 - Real Estate Asset Liquidity Trust –** ~C$407 million multi-tranche CMBS offering

**Tue, Oct 24 - Fortified Trust** – ~C$510 million multi-tranche ABS offering

**Tue, Oct 24 - Toromont Industries Ltd. (BBB(H)/-/-) –** C$500 million 3.842% 10-year senior unsecured notes at GoC+175 bps

**Wed, Oct 25 - Goldman Sachs Group Inc. (A(H)/A3/BBB+) -** C$750 million 3.307% 8NC7-year TLAC eligible senior unsecured notes at GoC+143 bps

**Thu, Oct 26 - FortisBC Energy Inc. (A/A3/-) -** C$175 million 3.69% 30-year senior unsecured notes at GoC +131 bps

Governments

**Mon, Oct 23 - Province of Ontario (AA(L)/Aa2/A+) –** C$1 billion 1.350% 5-year re-opening at GoC+42 bps

**Tue, Oct 24 - City of Vancouver (-/Aaa/AAA) –** C$85 million 2.875% 10-year offering at GoC+81 bps

## NORTH AMERICAN RATES UPDATE

North American government bond yields closed the week mixed with central bank and government actions driving sentiment through the week. North of the border, the Bank of Canada kept its target rate unchanged and maintained a mild hiking bias, reiterating that less monetary policy stimulus will likely be required over time but will be guided by incoming data to assess the sensitivity of the economy to interest rates, the evolution of economic capacity, and the dynamics of both wage growth and inflation. The Bank also revealed its expectation for Q3 GDP growth to be slower than previously thought (1.8% vs. 2.0% in July). The market-implied probability of a rate hike by year-end fell to ~20% from ~60% a month earlier. The Government of Canada also released its Fall Economic Statement, which suggested that stronger GDP growth in 2017 (3.1% vs. 1.9% in Budget 2017) and increased tax stimulus has afforded a better deficit outlook for the current fiscal year (C$19.9bn projection vs. C$28.5bn previously). In response, the GoC curve shifted 3-5 bps lower on the week. In the US, the focus domestically remains on corporate earnings, impending tax reform developments and the announcement of the next Federal Reserve Chair. The Treasury curve rose 1-2 bps across the curve. In international markets, the ECB unveiled its plans to extend its asset purchases nine months to September 2018, while outlining a reduction from the net EUR 60 billion monthly purchase level to a net target of EUR 30 billion per month starting in January 2018.

GoC

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.43% | ▼ 5 |
| 5yr | 1.66% | ▼ 4 |
| 10yr | 1.99% | ▼ 4 |
| 30yr | 2.34% | ▼ 3 |

UST

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.59% | ▲ 1 |
| 5yr | 2.03% | ▲ 1 |
| 10yr | 2.41% | ▲ 2 |
| 30yr | 2.92% | ▲ 2 |

**MARKET IMPLIED BOC RATES**

| Meeting | Implied Rate |
|---|---|
| December 6, 2017 | 1.0481 |
| January 17, 2018 | 1.1570 |
| March 7, 2018 | 1.2260 |

**SWAPS**

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.00 | ▼ 0.50 |
| 3yr | 39.25 | ▼ 0.50 |
| 5yr | 38.50 | ▼ 0.25 |
| 7yr | 36.50 | ▲ 0.75 |
| 10yr | 33.00 | ▲ 2.00 |
| 30yr | 23.75 | ▲ 3.00 |

**LOOKING AHEAD**

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Tue, Oct 31 | GDP MoM | 0.1% | 0.0% |
| Tue, Oct 31 | Industrial Product Price MoM | 0.5% | 0.3% |
| Wed, Nov 1 | Markit Canada Manufacturing PMI | -- | 55 |
| Fri, Nov 3 | Unemployment Rate | 6.2% | 6.2% |
| Fri, Nov 3 | Net Change in Employment | 15.6k | 10.0k |
| Fri, Nov 3 | Int'l Merchandise Trade | -- | -3.41b |
| **US Economic Data** | | | |
| Mon, Oct 30 | Personal Income | 0.4% | 0.2% |
| Mon, Oct 30 | Personal Spending | 0.8% | 0.1% |
| Wed, Nov 1 | MBA Mortgage Applications | -- | -4.6% |
| Wed, Nov 1 | Markit US Manufacturing PMI | 54.5 | 54.5 |
| Wed, Nov 1 | ISM Manufacturing | 59.1 | 60.8 |
| Wed, Nov 1 | FOMC Rate Decision (Upper Bound) | 1.25% | 1.25% |
| Thu, Nov 2 | Initial Jobless Claims | 235k | 233k |
| Fri, Nov 3 | Change in Nonfarm Payrolls | 310k | -33k |
| Fri, Nov 3 | Unemployment Rate | 4.2% | 4.2% |
| Fri, Nov 3 | Factory Orders | 1.0% | 1.2% |
| Fri, Nov 3 | Durable Goods Orders | -- | 2.2% |
| **International Economic Data** | | | |
| Mon, Oct 30 | Japan Industrial Production MoM | -1.6% | 2.0% |
| Mon, Oct 30 | Japan Jobless Rate | 2.8% | 2.8% |
| Tue, Oct 31 | France CPI YoY | 1.0% | 1.0% |
| Thu, Nov 2 | Bank of England Bank Rate | 0.5% | 0.3% |

## SELECTED COMPANIES REPORTING THIS WEEK

**Canada**

Agellan Commercial REIT, Brookfield Renewable Partners LP, Centerra Gold, Cogeco Communications, Colliers International Group, Thomson Reuters, TransAlta Corp, TransAlta Renewables, WestJet Airlines Ltd

**US**

Apple, Berkshire Hathaway, DowDuPont, Duke Energy, Eaton Corp, Edison International, Facebook, Kraft Heinz Co, Mastercard, MetLife, Moody's, Pfizer, Prudential Financial, QUALCOMM, Starbucks, Tesla, Yum! Brands

Regards,

**Rob Brown**
**Co-Head, Debt Capital Markets | RBC Capital Markets**
(416) 842-5506
rob.brown@rbccm.com
**Jamie Wetmore**
**Managing Director, Debt Capital Markets | RBC Capital Markets**
(416) 842-6452
jamie.wetmore@rbccm.com
**Adam Egberts**
**Associate, Debt Capital Markets | RBC Capital Markets**
(416) 842-2544
adam.egberts@rbccm.com

This email is intended only for the use of the individual(s) to whom it is addressed and may be privileged and confidential.
Unauthorised use or disclosure is prohibited. If you receive this e-mail in error, please advise immediately and delete the original message.
This message may have been altered without your or our knowledge and the sender does not accept any liability for any errors or omissions in the message.

Ce courriel est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent.
Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite.
Si vous recevez ce courriel par erreur, veuillez m'en aviser immédiatement, par retour de courriel ou par un autre moyen.

| Index | Level | | 1 Week Δ |
|---|---|---|---|
| S&P/TSX | 15,954 | ▲ | 0.6% |
| DJA | 23,434 | ▲ | 0.5% |
| S&P 500 | 2,581 | ▲ | 0.2% |
| NASDAQ | 6,701 | ▲ | 1.1% |
| Oil | $53.97 | ▲ | $2.50 |
| Gold | $1,273.71 | ▲ | $6.76 |
| USDCAD | 1.2826 | ▲ | 1.6% |

## GoC

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.43% | ▼ 5 |
| 5yr | 1.66% | ▼ 4 |
| 10yr | 1.99% | ▼ 4 |
| 30yr | 2.34% | ▼ 3 |

## UST

| Term | Yield (%) | 1 Week Δ (bps) |
|---|---|---|
| 2yr | 1.59% | ▲ 1 |
| 5yr | 2.03% | ▲ 1 |
| 10yr | 2.41% | ▲ 2 |
| 30yr | 2.92% | ▲ 2 |

| Meeting | Implied Rate |
|---|---|
| December 6, 2017 | 1.0481 |
| January 17, 2018 | 1.1570 |
| March 7, 2018 | 1.2260 |

| Swaps | Spread (bps) | 1 Week Δ(bps) |
|---|---|---|
| 2yr | 36.00 | ▼ 0.50 |
| 3yr | 39.25 | ▼ 0.50 |
| 5yr | 38.50 | ▼ 0.25 |
| 7yr | 36.50 | ▲ 0.75 |
| 10yr | 33.00 | ▲ 2.00 |
| 30yr | 23.75 | ▲ 3.00 |

| Date | Release | Survey | Prior |
|---|---|---|---|
| **Canadian Economic Data** | | | |
| Tue, Oct 31 | GDP MoM | 0.1% | 0.0% |
| Tue, Oct 31 | Industrial Product Price MoM | 0.5% | 0.3% |
| Wed, Nov 1 | Markit Canada Manufacturing PMI | -- | 55 |
| Fri, Nov 3 | Unemployment Rate | 6.2% | 6.2% |
| Fri, Nov 3 | Net Change in Employment | 15.6k | 10.0k |
| Fri, Nov 3 | Int'l Merchandise Trade | -- | -3.41b |
| **US Economic Data** | | | |
| Mon, Oct 30 | Personal Income | 0.4% | 0.2% |
| Mon, Oct 30 | Personal Spending | 0.8% | 0.1% |
| Wed, Nov 1 | MBA Mortgage Applications | -- | -4.6% |
| Wed, Nov 1 | Markit US Manufacturing PMI | 54.5 | 54.5 |
| Wed, Nov 1 | ISM Manufacturing | 59.1 | 60.8 |
| Wed, Nov 1 | FOMC Rate Decision (Upper Bound) | 1.25% | 1.25% |
| Thu, Nov 2 | Initial Jobless Claims | 235k | 233k |
| Fri, Nov 3 | Change in Nonfarm Payrolls | 310k | -33k |
| Fri, Nov 3 | Unemployment Rate | 4.2% | 4.2% |
| Fri, Nov 3 | Factory Orders | 1.0% | 1.2% |
| Fri, Nov 3 | Durable Goods Orders | -- | 2.2% |
| **International Economic Data** | | | |
| Mon, Oct 30 | Japan Industrial Production MoM | -1.6% | 2.0% |
| Mon, Oct 30 | Japan Jobless Rate | 2.8% | 2.8% |
| Tue, Oct 31 | France CPI YoY | 1.0% | 1.0% |
| Thu, Nov 2 | Bank of England Bank Rate | 0.5% | 0.3% |

RBC Capital Markets®

# Lower Mattagamy Energy LP

**DBRS: A(high)  Moody's: A2**

## C$ New Issue Indicative Pricing as at: October 30, 2017

| Term | 2 Year | 3 Year | 5 Year | 7 Year | 10 Year | 30 Year |
|---|---|---|---|---|---|---|
| Canada Bond Benchmark | Interp (1.75% 1SEP19 & 1.5% 1MAR20) | Interp (0.75% 1SEP20 & 0.75% 1MAR21) | Interp (1% 1SEP22 & 1.5% 1JUN23) | Interp (2.5% 1JUN24 & 2.25% 1JUN25) | Interp (1% 1JUN27 & 5.75% 1JUN29) | 2.75% 1DEC48 |
| Canada Yield (Bid) | 1.407% | 1.491% | 1.656% | 1.802% | 1.986% | 2.321% |
| **Credit Spread (bps)** | **44** | **52** | **63** | **73** | **88** | **128** |
| Offering Yield | 1.847% | 2.011% | 2.286% | 2.532% | 2.866% | 3.601% |
| **Re-Offer Spread to BAs** | **8** | **13** | **26** | **40** | **58** | **106** |
| **Re-Offer Spread to USD LIBOR** | **31** | **32** | **38** | **47** | **60** | **126** |

## Hedging future GoC levels with Bond Rate-Lock

| Bond Benchmark | CAN 1.75% 1SEP19 | CAN 0.75% 1SEP20 | CAN 1% 1SEP22 | CAN 2.5% 1JUN24 | CAN 1% 1JUN27 | CAN 2.75% 1DEC48 |
|---|---|---|---|---|---|---|
| Spot Level | 1.396% | 1.477% | 1.643% | 1.777% | 1.968% | 2.321% |
| For 3 months to 31-Jan-18 | 1.506% (+11 bps) | 1.552% (+8 bps) | 1.695% (+5 bps) | 1.822% (+4 bps) | 2.003% (+4 bps) | 2.340% (+2 bps) |
| For 6 months to 01-May-18 | 1.737% (+34 bps) | 1.687% (+21 bps) | 1.778% (+13 bps) | 1.888% (+11 bps) | 2.052% (+8 bps) | 2.364% (+4 bps) |
| For 12 months to 31-Oct-18 | 2.669% (+127 bps) | 2.097% (+62 bps) | 1.988% (+35 bps) | 2.053% (+28 bps) | 2.166% (+20 bps) | 2.416% (+10 bps) |

## Selected Secondary Trading Comparables

| | | | | | Bid Spread | |
|---|---|---|---|---|---|---|
| Issue | Amount (C$MM) | Benchmark | Remaining Term (Maturity / Par Call) | Price (Maturity / Par Call) | vs. Bond | vs. Curve |
| 4.331% due 18-May-21 | 225 | CAN 3 1/4 06/01/21 | 3.6 / - | $107.60 (M) | 63 | 63 |
| 3.416% due 20-Jun-24 | 200 | CAN 2 1/2 06/01/24 | 6.6 / - | $105.43 (M) | 76 | 76 |
| 2.307% due 21-Oct-26 | 220 | CAN 1 1/2 06/01/26 | 9.0 / - | $96.51 (M) | 85 | 83 |
| 5.139% due 18-May-41 | 250 | CAN 2 3/4 12/01/48 | 23.6 / - | $124.03 (M) | 129 | 128 |
| 4.944% due 21-Sep-43 | 200 | CAN 2 3/4 12/01/48 | 25.9 / - | $123.27 (M) | 129 | - |
| 4.176% due 23-Feb-46 | 275 | CAN 2 3/4 12/01/48 | 28.3 / - | $109.90 (M) | 129 | - |
| 4.175% due 23-Apr-52 | 225 | CAN 2 3/4 12/01/48 | 34.5 / - | $111.00 (M) | 129 | - |

*Pricing is indicative and subject to market conditions*

*Swapped equivalent levels and Rate Locks are for illustration purposes only and do not include cost of credit*

| Bank Name | RBC |
|---|---|
| Date | 10/30/2017 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-Year | 10-Year | 5-Year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Sep-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.75% | | | | |
| Benchmark Yield | 2.32% | 1.97% | 1.64% | 1.40% | -0.05% | -0.06% | -0.06% | -0.06% |
| Curve Adjustment (bp) | 0.0 | 1.8 | 1.3 | 1.1 | - | - | 0.100 | 0.300 |
| Spread to GoC Curve (bp) | **154.0** | **110.0** | **80.0** | **61.0** | (2.0) | (1.0) | (1.0) | (1.0) |
| Re-Offered Yield | 3.86% | 3.09% | 2.46% | 2.02% | -0.07% | -0.07% | -0.07% | -0.07% |
| Commission (bp) | 2.8 | 4.7 | 7.5 | 10.3 | (0.0) | (0.0) | (0.0) | (0.0) |
| **All-in Yield** | **3.89%** | **3.13%** | **2.53%** | **2.12%** | **-0.07%** | **-0.07%** | **-0.07%** | **-0.07%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | 132.0 | 93.0 | 65.0 | 46.0 | -6.0 | -2.0 | -2.0 | -2.0 |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-Year | 30-year | 10-year | 5-year | 2-year |
| TransAlta Corp (BBB/BBB-) | | 405.0 | 275.0 | 215.0 | | 0.0 | 0.0 | 0.0 |
| Nova Scotia Power (A(L)/-/BBB+) | 138.0 | 100.0 | 71.0 | 52.0 | -6.0 | -1.0 | -2.0 | -2.0 |
| Bruce Power (BBB/Baa2/BBB) | 207.0 | 153.0 | 104.0 | | -3.0 | -2.0 | -1.0 | |
| EPCOR (A(L)/-/A-) | 130.0 | 90.0 | 65.0 | 46.0 | -5.0 | -4.0 | -2.0 | -3.0 |
| FortisBC (A(L)/Baa1/-) | 134.0 | 94.0 | 69.0 | 50.0 | -4.0 | -4.0 | -2.0 | -3.0 |
| FortisAlberta (A(L)/-/A-) | 129.0 | 89.0 | 64.0 | 45.0 | -5.0 | -5.0 | -3.0 | -4.0 |
| TCPL (A(L)/A3/A-) | 175.0 | 110.0 | 75.0 | 50.0 | -3.0 | -4.0 | -4.0 | -4.0 |

| Secondary Pricing | Remaining Term | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | Bench | Maturity / Call | Bond | Curve | Bench | - | Bond | Curve |
| ONTPOW 3.315 10/04/27 Corp | CAN 1 06/01/27 | 9.9/9.7 (C) | 110.0 | 110.0 | | | -1.0 | -1.0 |

RBC Capital Markets®

**NEW ISSUE SUMMARY** October 23 - October 27, 2017

## CORPORATE NEW ISSUANCE

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| Real Estate Asset Liquidity Trust | 24-Oct-17 | Var | 407 | Var | Var | Var | RBC |
| Fortified Trust | 24-Oct-17 | Var | 510 | Var | Var | Var | BMO |
| Toromont Industries Ltd. | 24-Oct-17 | BBB(H)/-/- | 500 | 27-Oct-27 | 3.842% | 175 | BMO/CIBC/TD |
| Goldman Sachs Group Inc. | 25-Oct-17 | A(H)/A3/BBB+ | 750 | 31-Oct-25 | 3.307% | 143 | RBC/BMO/GS/SCI/TD |
| FortisBC Energy Inc. | 26-Oct-17 | A/A3/- | 175 | 30-Oct-47 | 3.690% | 131 | SCI |
| **TOTAL** | | | **2,342 MM** | | | | |

## GOVERNMENT NEW ISSUANCE

| Issuer | Price Date | Ratings D / M / S | Size (CAD) | Maturity | Coupon (%) | Spread (bps) | Lead Dealer(s) |
|---|---|---|---|---|---|---|---|
| Province of Ontario | 23-Oct-17 | AA(L)/Aa2/A+ | 1,000 | 8-Mar-22 | 1.350% | +42 | TD/NBF/SCI |
| City of Vancouver | 24-Oct-17 | -/Aaa/AAA | 85 | 3-Nov-27 | 2.850% | +81 | CIBC/RBC/NBF |
| **TOTAL** | | | **1,085 MM** | | | | |

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) |
| **To:** | "john.s.lee@opg.com"; "mmanning@ofina.on.ca"; "Linda.Smith@ofina.on.ca"; "Sheen.Liu@opg.com"; "brett.kichiy@ofina.on.ca"; "richard.wong@opg.com"; "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Kevin Shvarts |
| **Cc:** | Greg Lawrence (Scotiabank GBM); Fanny Doucet (Scotiabank GBM); Michael Costakos (Scotiabank GBM); Stephen Lepone (Scotiabank GBM); Tiffany Sun (Scotiabank GBM); Andrew Fredericks (Scotiabank GBM); Jenna Dicks (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 10/30/2017 |
| **Date:** | Monday, October 30, 2017 6:42:03 PM |
| **Attachments:** | OPG Weekly Indicative Spreads - October 30, 2017.xlsx<br>Ontario Power Generation-Oct-30-2017.pdf<br>estimates.pdf |

---

Good Evening,

Please find attached the excel copy of our indicative new issue spreads.

Thanks,

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a: http://www.scotiabank.com/email_disclaimer/email_espanol.html

| Bank Name | Scotiabank |
|---|---|
| Date | 30-Oct-17 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Nov-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.25% | | | | |
| Benchmark Yield | 2.33% | 1.99% | 1.66% | 1.41% | -0.04% | -0.05% | -0.04% | -0.07% |
| Curve Adjustment (bp) | | | | | | | | |
| Spread to GoC Curve (bp) | +156 | +110 | +85 | +61 | -3 | -3 | -3 | -3 |
| Re-Offered Yield | 3.89% | 3.09% | 2.51% | 2.02% | -0.07% | -0.08% | -0.07% | -0.10% |
| Commission (bp) | 4.00 | 5.00 | 7.00 | 10.00 | | | | |
| **All-in Yield** | **3.93%** | **3.14%** | **2.58%** | **2.12%** | **-0.07%** | **-0.08%** | **-0.07%** | **-0.10%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | +133 | +87 | +61 | - | -4 | -3 | -4 | - |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (A(L)/-/BBB+) | 140 | 96 | 70 | 51 | -5 | -3 | -4 | -4 |
| EPCOR (A(L)/-/A-) | 131 | 87 | 60 | - | -6 | -4 | -5 | - |

| Bank Name |
|---|
| Date |

| Indicative OPG New Issue Spreads | Cur | |
|---|---|---|
| | 30-year | 10-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% |
| Benchmark Yield | 2.37% | 2.04% |
| Curve Adjustment (bp) | | |
| Spread to GoC Curve (bp) | +159 | +113 |
| Re-Offered Yield | 3.96% | 3.17% |
| Commission (bp) | 4.00 | 5.00 |
| **All-in Yield** | **4.01%** | **3.23%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Hydro One (A(H)/A1/A+) | +137 | +90 |

| Other Comparables (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Nova Scotia Power (A(L)/-/BBB+) | 145 | 99 |
| EPCOR (A(L)/-/A-) | 137 | 91 |

| Scotiabank |
| --- |
| 23-Oct-17 |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 1-Sep-22 | 1-Nov-19 |
| 1.00% | 1.25% |
| 1.70% | 1.48% |
| | |
| +88 | +64 |
| 2.58% | 2.12% |
| 7.00 | 10.00 |
| **2.68%** | **2.27%** |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| +65 | - |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 74 | 55 |
| 65 | - |

# Indicative New Issue Spreads

**October-30-17**

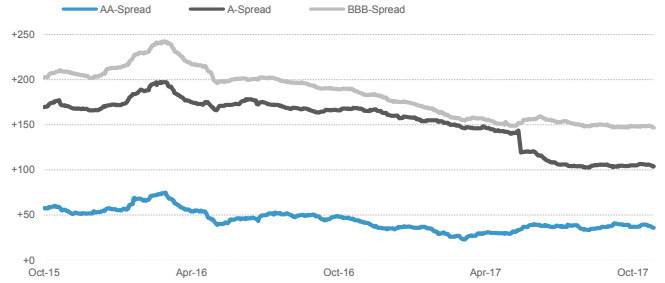
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 1.25% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Nov-19 | | 1-Sep-22 | | 1-Jun-27 | | 01-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.41% | -0.07% | 1.66% | -0.04% | 1.99% | -0.05% | 2.33% | -0.04% |
| **Indicative Spread** | **+61** | -3 | **+85** | -3 | **+110** | -3 | **+156** | -3 |
| Indicative Re-offer Yield | 2.02% | -0.10% | 2.51% | -0.07% | 3.09% | -0.08% | 3.89% | -0.07% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.123% | | 2.578% | | 3.141% | | 3.926% | |
| All-in Spread to GoC curve (bp) | +71 | | +92 | | +115 | | +160 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 26-Oct | FortisBC Energy | A/-/A3 | $175M | 30.0 | +131 |
| 25-Oct | The Goldman Sachs Group Inc. | A(H)/BBB+/A3 | $750M | 8.0 | +143 |
| 24-Oct | Fortified Trust | A(sf)/-/A2(sf) | $10M | 3.0 | +116 |
| 24-Oct | Fortified Trust | AAA(sf)/-/Aaa(sf) | $500M | 3.0 | +61 |
| 24-Oct | Real Estate Asset Liquidity Trust | AAA(sf) - BBB(sf)/-/- | $377M | 4.6 - 9.7 | +125 - +400 |
| 24-Oct | Toromont Industries Ltd. | BBB(H)/-/- | $500M | 10.0 | +175 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+61** | -3 | **+85** | -3 | **+110** | -3 | **+156** | -3 |
| Hydro One | A(H)/A3/A | - | | +61 | -4 | +87 | -3 | +133 | -4 |
| Nova Scotia Power | A(L)/-/BBB+ | +51 | -4 | +70 | -4 | +96 | -3 | +140 | -5 |
| EPCOR | A(L)/-/A- | - | | +60 | -5 | +87 | -4 | +131 | -6 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

The Canadian corporate credit market remained busy this week with 5 issuers pricing a combined $2.3BN. Toromont Industries Ltd. accessed the market with a $500MM 10 year transaction at CRV + 175 bps. Fortified Trust executed a 3 year $510MM offering of Class A and Class C notes with the Class A notes pricing at CRV + 61 bps. Real Estate Liquidity Trust issued $376.8MM Commercial Mortgage Pass-Through Certificates across 6 tranches. The Goldman Sachs Group Inc. came to the Maple market with $750MM in 8NC7 notes at CRV + 143 bps; the deal saw 57 buyers with 20-25% late average fills. Fortis BC Energy Inc. came to market with a $175MM 30 year transaction; the deal saw strong demand with books more than 5x oversubscribed and fills in the 5% area. South of the border, Citigroup priced $4.4BN, CPPIB issued $1BN, Caisses Desjardins du Quebec (CCDJ) priced $1.5BN, Goldman Sachs issued $7BN, and AT&T priced $1.15BN. Overall market tone remains constructive and investors continue to express strong demand for new issues.
In headlines, the BoC left the policy rate unchanged. The market is now pricing a December rate hike at a probability of 26% vs. 44% pre-announcement. Spreads ended the week 1-2 bps tighter on the back of balanced flows across all sectors. At week end, YTD new issue volume in the CAD market reached $108.6BN, 17% ahead of last year and on pace to mark the busiest year on record.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Scotiabank™
Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of October 30 – November 3

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 10/31 | 08:30 | IPPI (m/m) | Sep | -- | -- | 0.3 |
| 10/31 | 08:30 | Raw Materials Price Index (m/m) | Sep | -- | -- | 1.1 |
| 10/31 | 08:30 | Real GDP (m/m) | Aug | 0.2 | 0.1 | 0.0 |
| 10/31 | 15:30 | **Poloz and Wilkins testify at Finance Committee** | | | | |
| 11/01 | 16:15 | **Poloz and Wilkins testify at Senate** | | | | |
| 11/03 | 08:30 | Employment (000s m/m) | Oct | 25 | 15.6 | 10.0 |
| 11/03 | 08:30 | Unemployment Rate (%) | Oct | 6.1 | 6.2 | 6.2 |
| 11/03 | 08:30 | Merchandise Trade Balance (C$ bn) | Sep | -3.5 | -- | -3.4 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 10/30 | 08:30 | PCE Deflator (m/m) | Sep | 0.5 | 0.4 | 0.2 |
| 10/30 | 08:30 | PCE Deflator (y/y) | Sep | 1.7 | 1.7 | 1.4 |
| 10/30 | 08:30 | PCE ex. Food & Energy (m/m) | Sep | 0.4 | 0.1 | 0.1 |
| 10/30 | 08:30 | PCE ex. Food & Energy (y/y) | Sep | 1.6 | 1.3 | 1.3 |
| 10/30 | 08:30 | Personal Spending (m/m) | Sep | 0.9 | 0.7 | 0.1 |
| 10/30 | 08:30 | Personal Income (m/m) | Sep | 0.3 | 0.4 | 0.2 |
| 10/30 | 10:30 | Dallas Fed. Manufacturing Activity | Oct | -- | 21.0 | 21.3 |
| 10/31 | 08:30 | Employment Cost Index (q/q) | 3Q | -- | 0.7 | 0.5 |
| 10/31 | 09:00 | S&P/Case-Shiller Home Price Index (m/m) | Aug | -- | -- | 0.4 |
| 10/31 | 09:00 | S&P/Case-Shiller Home Price Index (y/y) | Aug | -- | -- | 5.8 |
| 10/31 | 09:45 | Chicago PMI | Oct | -- | 60.0 | 65.2 |
| 10/31 | 10:00 | Consumer Confidence Index | Oct | 120 | 121.0 | 119.8 |
| 11/01 | 07:00 | MBA Mortgage Applications (w/w) | OCT 27 | -- | -- | -4.6 |
| 11/01 | 08:15 | ADP Employment Report (000s m/m) | Oct | 210.0 | 187.5 | 135.4 |
| 11/01 | 10:00 | Construction Spending (m/m) | Sep | 0.0 | -0.3 | 0.5 |
| 11/01 | 10:00 | ISM Manufacturing Index | Oct | 60.0 | 59.2 | 60.8 |
| 11/01 | 14:00 | **FOMC Interest Rate Meeting (%)** | **Nov 1** | **1.25** | **1.25** | **1.25** |
| 11/01 | | Domestic Vehicle Sales (mn a.r.) | Oct | -- | -- | 14.3 |
| 11/01 | | Total Vehicle Sales (mn a.r.) | Oct | 17.8 | 17.3 | 18.5 |
| 11/02 | 08:30 | Initial Jobless Claims (000s) | OCT 28 | 235 | -- | 233 |
| 11/02 | 08:30 | Continuing Claims (000s) | OCT 21 | 1900 | -- | 1893 |
| 11/02 | 08:30 | Productivity (q/q a.r.) | 3Q P | -- | 1.9 | 1.5 |
| 11/02 | 08:30 | Unit Labor Costs (q/q a.r.) | 3Q P | -- | 0.5 | 0.2 |
| 11/02 | 18:15 | **Fed's Bostic Speaks in Chicago about Government Statistics** | | | | |
| 11/03 | 08:30 | Nonfarm Employment Report (000s m/m) | Oct | 300.0 | 310.0 | -33.0 |
| 11/03 | 08:30 | Unemployment Rate (%) | Oct | 4.1 | 4.2 | 4.2 |
| 11/03 | 08:30 | Household Employment Report (000s m/m) | Oct | -- | -- | 906.0 |
| 11/03 | 08:30 | Average Hourly Earnings (m/m) | Oct | 0.2 | 0.2 | 0.5 |
| 11/03 | 08:30 | Average Hourly Earnings (y/y) | Oct | 2.8 | 2.7 | 2.9 |
| 11/03 | 08:30 | Average Weekly Hours | Oct | -- | 34.4 | 34.4 |
| 11/03 | 08:30 | Trade Balance (US$ bn) | Sep | -44.0 | -43.5 | -42.4 |
| 11/03 | 10:00 | Factory Orders (m/m) | Sep | 1.0 | 1.0 | 1.2 |
| 11/03 | 10:00 | ISM Non-Manufacturing Composite | Oct | 59.0 | 58.1 | 59.8 |
| 11/03 | 12:15 | **Fed's Kashkari Speaks on Housing and Finance** | | | | |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) |
| **To:** | "john.s.lee@opg.com"; "mmanning@ofina.on.ca"; "Linda.Smith@ofina.on.ca"; "Sheen.Liu@opg.com"; "brett.kichiy@ofina.on.ca"; "richard.wong@opg.com"; "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Kevin Shvarts |
| **Cc:** | Greg Lawrence (Scotiabank GBM); Fanny Doucet (Scotiabank GBM); Michael Costakos (Scotiabank GBM); Stephen Lepone (Scotiabank GBM); Tiffany Sun (Scotiabank GBM); Andrew Fredericks (Scotiabank GBM); Jenna Dicks (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 10/23/2017 |
| **Date:** | Monday, October 23, 2017 6:58:09 PM |
| **Attachments:** | OPG Weekly Indicative Spreads - October 23, 2017.xlsx<br>Ontario Power Generation-Oct-23-2017.pdf<br>estimates.pdf |

---

Good Evening,

Please find attached the excel copy of our indicative new issue spreads.

Thanks,

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a: http://www.scotiabank.com/email_disclaimer/email_espanol.html

| Bank Name | Scotiabank |
|---|---|
| Date | 23-Oct-17 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Nov-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.25% | | | | |
| Benchmark Yield | 2.37% | 2.04% | 1.70% | 1.48% | -0.01% | 0.00% | -0.02% | -0.04% |
| Curve Adjustment (bp) | | | | | | | | |
| Spread to GoC Curve (bp) | +159 | +113 | +88 | +64 | 0 | -1 | -1 | -1 |
| Re-Offered Yield | 3.96% | 3.17% | 2.58% | 2.12% | -0.01% | -0.01% | -0.03% | -0.05% |
| Commission (bp) | 4.00 | 5.00 | 7.00 | 10.00 | | | | |
| **All-in Yield** | **4.00%** | **3.22%** | **2.65%** | **2.22%** | **-0.01%** | **-0.01%** | **-0.03%** | **-0.05%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | +137 | +90 | +65 | - | 0 | -2 | -2 | - |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (A(L)/-/BBB+) | 145 | 99 | 74 | 55 | 0 | -1 | -1 | -1 |
| EPCOR (A(L)/-/A-) | 137 | 91 | 65 | - | 0 | -1 | -1 | - |

| Bank Name |
| --- |
| Date |

| Indicative OPG New Issue Spreads | Cur | |
| --- | --- | --- |
| | 30-year | 10-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% |
| Benchmark Yield | 2.38% | 2.04% |
| Curve Adjustment (bp) | | |
| Spread to GoC Curve (bp) | +159 | +114 |
| Re-Offered Yield | 3.97% | 3.18% |
| Commission (bp) | 4.00 | 5.00 |
| **All-in Yield** | **4.01%** | **3.23%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Cur | |
| --- | --- | --- |
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Hydro One (A(H)/A1/A+) | +137 | +92 |

| Other Comparables (S&P/Moody's/ DBRS) | Cur | |
| --- | --- | --- |
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Nova Scotia Power (A(L)/-/BBB+) | 145 | 100 |
| EPCOR (A(L)/-/A-) | 137 | 92 |

| Scotiabank |
| --- |
| 16-Oct-17 |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 1-Sep-22 | 1-Nov-19 |
| 1.00% | 1.25% |
| 1.72% | 1.52% |
| | |
| +89 | +65 |
| 2.61% | 2.17% |
| 7.00 | 10.00 |
| **2.68%** | **2.27%** |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| +67 | - |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 75 | 56 |
| 66 | - |

# Indicative New Issue Spreads

**Monday, October 23, 2017**

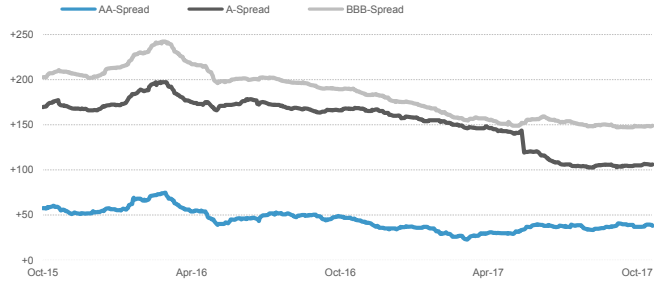
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 1.25% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Nov-19 | | 1-Sep-22 | | 1-Jun-27 | | 1-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.48% | -0.04% | 1.70% | -0.03% | 2.04% | -0.01% | 2.37% | -0.01% |
| **Indicative Spread** | **+64** | -1 | **+88** | -1 | **+113** | -1 | **+159** | 0 |
| Indicative Re-offer Yield | 2.12% | -0.05% | 2.58% | -0.04% | 3.17% | -0.02% | 3.96% | -0.01% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.215% | | 2.654% | | 3.221% | | 4.001% | |
| All-in Spread to GoC curve (bp) | +74 | | +95 | | +118 | | +163 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 19-Oct | PSP Capital Inc. | AAA/AAA/Aaa | $500M | 3.0 | +34 |
| 17-Oct | Canadian Energy Services | B/B/- | $300M | 7.0 | +453 |
| 17-Oct | Ford Auto Securitization Trust | AA(high)/AA+/- | $16M | 4.4 | +110 |
| 17-Oct | Ford Auto Securitization Trust | AAA/AAA/- | $117M | 4.2 | +80 |
| 17-Oct | Ford Auto Securitization Trust | AAA/AAA/- | $218M | 2.6 | +60 |
| 17-Oct | Ford Auto Securitization Trust | AAA/AAA/- | $168M | 1.0 | +50 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+64** | -1 | **+88** | -1 | **+113** | -1 | **+159** | 0 |
| Hydro One | A(H)/A3/A | - | | +65 | -2 | +90 | -2 | +137 | 0 |
| Nova Scotia Power | A(L)/-/BBB+ | +55 | -1 | +74 | -1 | +99 | -1 | +145 | 0 |
| EPCOR | A(L)/-/A- | - | | +65 | -1 | +91 | -1 | +137 | 0 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

The Canadian corporate credit market remained active last week with 3 issuers pricing a combined $1.3B. CES Energy Solutions accessed the market with $300MM 7NC3 notes at 6.375% to refinance its outstanding 7.375% notes due 2020. PSP Capital Inc. reopened its October 2020 notes for $500MM at +34bps. Ford Auto Securitization Trust issued ~$500MM of ABS notes. Market tone remained stable with both the TSX and S&P500 finishing slightly higher by 0.3% and 2.0%, respectively. The market implied probability of a December rate hike by the BoC decreased from 53% to 39% WoW, driven by several economic data/events. BoC Governor Poloz released a few dovish comments on Canadian growth coupled with weak domestic business outlook data. OSFI released its final version of Guideline B-20 which requires stress testing of uninsured mortgage borrowers at the higher rate of 5 year GoC or the contractual mortgage rate +200bps. Canadian CPI and retail sales data missed consensus sending front end rates and the loonie lower. Spreads ended the week 1-2 bps tighter on the back of balanced flow across all sectors with a particular focus on deposit notes and NVCC. South of the border, Target priced $750MM, RBC issued $2.5B in FXD/FRN, Goldman issued a $1.5B PerpNC5 transaction, and TD priced a $2B FXD/FRN deal. At week end, YTD new issue volume in the CAD market reached $106.3B, 17% ahead of last year and on pace to mark the busiest year on record.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of October 23 – 27

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus |
|---|---|---|---|---|---|
| 10/23 | 08:30 | Wholesale Trade (m/m) | Aug | -- | -- |
| 10/25 | 10:00 | **BoC Interest Rate Announcement (%)** | **Oct 25** | **1.00** | **1.00** |
| 10/25 | 10:00 | **Bank of Canada Releases October Monetary Policy Report** | | | |
| 10/25 | 11:15 | **BOC's Poloz and Wilkins Hold Press Conference in Ottawa** | | | |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 10/24 | 10:00 | Richmond Fed Manufacturing Index | Oct | -- | 16.0 | 19.0 |
| 10/25 | 07:00 | MBA Mortgage Applications (w/w) | OCT 20 | -- | -- | 3.6 |
| 10/25 | 08:30 | Durable Goods Orders (m/m) | Sep P | 1.5 | 1.0 | 2.0 |
| 10/25 | 08:30 | Durable Goods Orders ex. Trans. (m/m) | Sep P | 0.5 | 0.5 | 0.5 |
| 10/25 | 10:00 | New Home Sales (000s a.r.) | Sep | 550.0 | 555.0 | 560.0 |
| 10/26 | 08:30 | Initial Jobless Claims (000s) | OCT 21 | 230 | 235 | 222 |
| 10/26 | 08:30 | Continuing Claims (000s) | OCT 14 | 1885 | -- | 1888 |
| 10/26 | 08:30 | Wholesale Inventories (m/m) | Sep P | -- | -- | 0.9 |
| 10/26 | 10:00 | Pending Home Sales (m/m) | Sep | -- | 0.6 | -2.6 |
| 10/27 | 08:30 | GDP (q/q a.r.) | 3Q A | 2.3 | 2.6 | 3.1 |
| 10/27 | 08:30 | GDP Deflator (q/q a.r.) | 3Q A | -- | 1.8 | 1.0 |
| 10/27 | 10:00 | U. of Michigan Consumer Sentiment | Oct F | -- | 101.0 | 101.1 |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) |
| **To:** | "john.s.lee@opg.com"; "mmanning@ofina.on.ca"; "Linda.Smith@ofina.on.ca"; "Sheen.Liu@opg.com"; "brett.kichiy@ofina.on.ca"; "richard.wong@opg.com"; "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Kevin Shvarts |
| **Cc:** | Greg Lawrence (Scotiabank GBM); Fanny Doucet (Scotiabank GBM); Michael Costakos (Scotiabank GBM); Stephen Lepone (Scotiabank GBM); Tiffany Sun (Scotiabank GBM); Andrew Fredericks (Scotiabank GBM); Jenna Dicks (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 10/02/2017 |
| **Date:** | Monday, October 02, 2017 8:07:13 PM |
| **Attachments:** | OPG Weekly Indicative Spreads - October 2, 2017.xlsx<br>Ontario Power Generation-Oct-2-2017.pdf<br>estimates.pdf |

---

Good Evening,

Please find attached the excel copy of our indicative new issue spreads.

Thanks,

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a: http://www.scotiabank.com/email_disclaimer/email_espanol.html

| Bank Name | Scotiabank |
|---|---|
| Date | 2-Oct-17 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Aug-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 0.75% | | | | |
| Benchmark Yield | 2.48% | 2.12% | 1.77% | 1.54% | 0.05% | 0.02% | -0.03% | -0.06% |
| Curve Adjustment (bp) | | | | | | | | |
| Spread to GoC Curve (bp) | +159 | +115 | +90 | +65 | 1 | 2 | 2 | 2 |
| Re-Offered Yield | 4.07% | 3.27% | 2.67% | 2.19% | 0.06% | 0.04% | -0.01% | -0.04% |
| Commission (bp) | 4.00 | 5.00 | 7.00 | 10.00 | | | | |
| **All-in Yield** | **4.11%** | **3.32%** | **2.74%** | **2.29%** | **0.06%** | **0.04%** | **-0.01%** | **-0.04%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | +139 | +95 | +70 | - | -3 | -2 | -2 | - |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (A(L)/-/BBB+) | 148 | 103 | 78 | 58 | -2 | -2 | -2 | -2 |
| EPCOR (A(L)/-/A-) | 137 | 92 | 66 | - | -2 | -2 | -2 | - |

| Bank Name |
|---|
| Date |

| Indicative OPG New Issue Spreads | Cur | |
|---|---|---|
| | 30-year | 10-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% |
| Benchmark Yield | 2.43% | 2.10% |
| Curve Adjustment (bp) | | |
| Spread to GoC Curve (bp) | +158 | +113 |
| Re-Offered Yield | 4.01% | 3.23% |
| Commission (bp) | 4.00 | 5.00 |
| **All-in Yield** | **4.05%** | **3.28%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Hydro One (A(H)/A1/A+) | +142 | +97 |

| Other Comparables (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Nova Scotia Power (A(L)/-/BBB+) | 150 | 105 |
| EPCOR (A(L)/-/A-) | 139 | 94 |

| Scotiabank |
| --- |
| 25-Sep-17 |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 1-Sep-22 | 1-Aug-19 |
| 1.00% | 0.75% |
| 1.80% | 1.60% |
| | |
| +88 | +63 |
| 2.68% | 2.23% |
| 7.00 | 10.00 |
| **2.75%** | **2.33%** |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| +72 | - |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 80 | 60 |
| 68 | - |

# Indicative New Issue Spreads

October-02-17

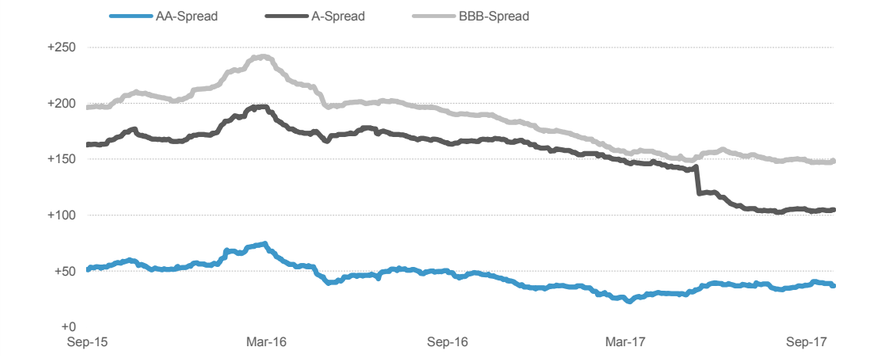
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 0.75% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Aug-19 | | 1-Sep-22 | | 1-Jun-27 | | 01-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.54% | -0.06% | 1.77% | -0.03% | 2.12% | 0.02% | 2.48% | 0.05% |
| **Indicative Spread** | **+65** | 2 | **+90** | 2 | **+115** | 2 | **+159** | 1 |
| Indicative Re-offer Yield | 2.19% | -0.04% | 2.67% | -0.01% | 3.27% | 0.04% | 4.07% | 0.06% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.293% | | 2.740% | | 3.315% | | 4.112% | |
| All-in Spread to GoC curve (bp) | +75 | | +97 | | +120 | | +163 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 28-Sep | Gibson Energy Inc. | -/BB/Ba2 | $250M | 6.8 | +330 |
| 28-Sep | Alberta Powerline LP | A(L)/-/A2 | $1,385M | 14.9 - 36.4 | +125 - 155 |
| 28-Sep | Ontario Power Generation Inc. | A(L)/BBB+/- | $500M | 10.0 | +115 |
| 26-Sep | Winnipeg Airport Authority | -/A/A2 | $125M | 30.0 | +120 |
| 26-Sep | Omers Realty Corp | AA(L)/-/- | $700M | 10.0 | +111 |
| 26-Sep | Bell Canada | BBB(H)/BBB+/Baa1 | $1,500M | 5.0 / 10.0 | +100 - 150 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+65** | 2 | **+90** | 2 | **+115** | 2 | **+159** | 1 |
| Hydro One | A(H)/A3/A | - | | +70 | -2 | +95 | -2 | +139 | -3 |
| Nova Scotia Power | A(L)/-/BBB+ | +58 | -2 | +78 | -2 | +103 | -2 | +148 | -2 |
| EPCOR | A(L)/-/A- | - | | +66 | -2 | +92 | -2 | +137 | -2 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

The Canadian corporate credit market had another busy week with nine issuers pricing a combined $5.9B, bringing new issue volume to $99.6B (up 16% vs. prior year) at week end. Following the busiest September on record, new issuance is expected to remain strong as issuers look to take advantage of robust investor demand and get ahead of anticipated moves to underlying government yields.

Market tone was strong on the back of solid U.S. GDP data and the release of Trump's tax plan. The TSX finished up ~1.5% WoW as oil continued to rally and spreads in the Canadian corporate market ended the week slightly tighter with some outperformance in Maple Financial names, deposit notes, and NVCC.

South of the border, we saw Nissan, Seven Generations Energy, Goldman Sachs, CIBC, and BMO access the U.S. market. The Bank of Nova Scotia launched its US$500MM prime auto loan ABS transaction – Securitized Term Auto Receivables Trust (SSTRT).

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Scotiabank™
Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of October 2 – 6

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 10/03 | 12:30 | **Bank of Canada Deputy Leduc speaks in Sherbooke, Quebec** | | | | |
| 10/05 | 08:30 | Merchandise Trade Balance (C$ bn) | Aug | -2.6 | -- | -3.0 |
| 10/06 | 08:30 | Employment (000s m/m) | Sep | 20.0 | -- | 22.2 |
| 10/06 | 08:30 | Unemployment Rate (%) | Sep | 6.1 | -- | 6.2 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 10/02 | 10:00 | Construction Spending (m/m) | Aug | 0.2 | 0.4 | -0.6 |
| 10/02 | 10:00 | ISM Manufacturing Index | Sep | 58.0 | 58.0 | 58.8 |
| 10/02 | 14:00 | **Fed's Kaplan Speaks in El Paso** | | | | |
| 10/03 | | Domestic Vehicle Sales (mn a.r.) | Sep | -- | 12.7 | 12.5 |
| 10/03 | | Total Vehicle Sales (mn a.r.) | Sep | 16.6 | 16.7 | 16.0 |
| 10/03 | 08:30 | **Fed's Powell Discussed Regulatory Reform** | | | | |
| 10/03 | 08:30 | **Fed's Powell Discusses Regulatory Reform** | | | | |
| 10/04 | 07:00 | MBA Mortgage Applications (w/w) | SEP 29 | -- | -- | -0.5 |
| 10/04 | 08:15 | ADP Employment Report (000s m/m) | Sep | 100.0 | 140.0 | 236.6 |
| 10/04 | 10:00 | ISM Non-Manufacturing Composite | Sep | 55.0 | 55.5 | 55.3 |
| 10/04 | 15:15 | **Yellen Gives Welcoming Remarks at Community Banking Event** | | | | |
| 10/05 | 08:30 | Trade Balance (US$ bn) | Aug | -44.1 | -42.8 | -43.7 |
| 10/05 | 08:30 | Initial Jobless Claims (000s) | SEP 30 | 270 | 265 | 272 |
| 10/05 | 08:30 | Continuing Claims (000s) | SEP 23 | -- | 1950 | 1934 |
| 10/05 | 10:00 | Factory Orders (m/m) | Aug | 1.2 | 0.9 | -3.3 |
| 10/05 | 09:10 | **Fed's Powell Speaks on Treasury Markets and the TMPG** | | | | |
| 10/05 | 09:15 | **Fed's Williams Speaks at Community Banking Conference** | | | | |
| 10/05 | 10:00 | **Fed's Harker Speaks at Workforce Conference** | | | | |
| 10/05 | 16:30 | **Fed's George Speaks at Workforce Conference** | | | | |
| 10/06 | 08:30 | Nonfarm Employment Report (000s m/m) | Sep | 60.0 | 75.0 | 156.0 |
| 10/06 | 08:30 | Unemployment Rate (%) | Sep | 4.5 | 4.4 | 4.4 |
| 10/06 | 08:30 | Household Employment Report (000s m/m) | Sep | -- | -- | -74.0 |
| 10/06 | 08:30 | Average Hourly Earnings (m/m) | Sep | -- | 0.3 | 0.1 |
| 10/06 | 08:30 | Average Hourly Earnings (y/y) | Sep | -- | 2.6 | 2.5 |
| 10/06 | 08:30 | Average Weekly Hours | Sep | -- | 34.4 | 34.4 |
| 10/06 | 15:00 | Consumer Credit (US$ bn m/m) | Aug | -- | 15.5 | 18.5 |
| 10/06 | 09:15 | **Fed's Bostic Speaks at Workforce Conference** | | | | |
| 10/06 | 12:15 | **Fed's Dudley to Speak on Monetary Policy** | | | | |
| 10/06 | 12:45 | **Fed's Kaplan Speaks at Workforce Conference** | | | | |
| 10/06 | 13:00 | **Fed's Bullard Speaks on Economy in St. Louis** | | | | |
| 10/06 | | **United States Sovereign Debt to be rated by Moody's** | | | | |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) on behalf of Greg Lawrence (Scotiabank GBM) |
| **To:** | "john.s.lee@opg.com"; Mike Manning; Linda Smith; "Sheen.Liu@opg.com"; Brett Kichiy; "richard.wong@opg.com"; Greg Lawrence (Scotiabank GBM); "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Michael Costakos (Scotiabank GBM) |
| **Cc:** | Greg Lawrence (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 9/18/2017 |
| **Date:** | Monday, September 18, 2017 5:57:26 PM |
| **Attachments:** | Ontario Power Generation-Sep-18-2017.pdf<br>estimates.pdf |

---

Please find attached our indicative new issue spreads.

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

_____

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a:
http://www.scotiabank.com/email_disclaimer/email_espanol.html

# Indicative New Issue Spreads

**Monday, September 18, 2017**

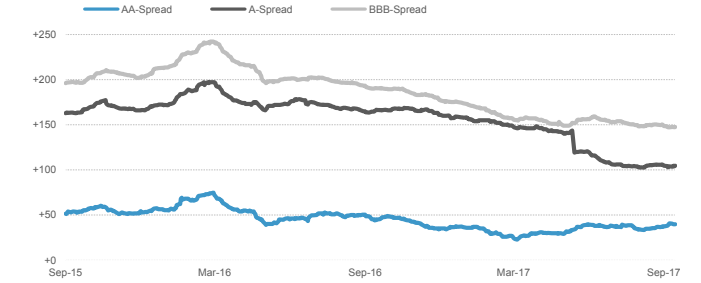
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 0.75% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Aug-19 | | 1-Sep-22 | | 1-Jun-27 | | 1-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.57% | 0.02% | 1.78% | 0.03% | 2.09% | 0.05% | 2.44% | 0.06% |
| **Indicative Spread** | **+64** | 1 | **+89** | 1 | **+114** | 1 | **+158** | 1 |
| Indicative Re-offer Yield | 2.21% | 0.03% | 2.67% | 0.04% | 3.23% | 0.06% | 4.02% | 0.07% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.312% | | 2.745% | | 3.283% | | 4.055% | |
| All-in Spread to GoC curve (bp) | +74 | | +96 | | +119 | | +162 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 14-Sep | Finning International Inc. | BBB(H)/-/- | $200M | 4.0 | +113 |
| 13-Sep | Capital Power Corporation | BBB(L)/BBB-/- | $450M | 7.0 | +235 |
| 13-Sep | Morguard Corporation | BBB(L)/-/- | $200M | 5.0 | +255 |
| 13-Sep | TransCanada Pipelines | A(L)/-/A3 | $1,000M | 10.5 / 30.0 | +128 / +190 |
| 13-Sep | Bank of America Corporation | A/BBB+/Baa1 | $500M | 7.0 | +147 |
| 12-Sep | Empire Life Insurance | A(L)/-/- | $200M | 5.5 | +185 |
| 12-Sep | Ford Credit Canada | BBB/BBB/Baa2 | $1,000M | 3.0 / 5.0 | +83 / +157 |

| COMPARABLES | Ratings (DBRS/Moody's/S&P) | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+64** | 0 | **+89** | 0 | **+114** | 0 | **+158** | 0 |
| Hydro One | A(H)/A3/A | - | | +73 | 0 | +98 | 0 | +144 | 0 |
| Nova Scotia Power | A(L)/-/BBB+ | +61 | 1 | +81 | 1 | +106 | 1 | +150 | 1 |
| EPCOR | A(L)/-/A- | - | | +69 | 1 | +95 | 1 | +140 | 1 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

It was a busy week in the Canadian corporate credit market with a total of 8 separate issuers pricing $4.6BN. At week end, YTD new issue volume in the CAD market reached $91.3BN, 7% ahead of last year. South of the border, financial issuers kept busy with issuances seen from Ontario Teachers' Finance Trust, Metropolitan Life Global Funding I, GM Financial, and Bank of Nova Scotia.

Spreads in the Canadian corporate market ended generally unchanged to a touch wider this week with some outperformance seen in bank NVCC subordinated debt.

With respect to the rates market, the US and Canada curve flattened out noticeably as the front end was affected by strong US inflation data and significant geopolitical risk with North Korea gave an early bid further out the curve. Sights are set on the FOMC press conference next Wednesday, especially with the looming debt ceiling uncertainty.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of September 18 – 22

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/18 | 08:30 | International Securities Transactions (C$ bn) | Jul | -- | -- | -0.9 |
| 09/18 | 14:15 | **Speech by Bank of Canada Deputy Governor Tim Lane** | | | | |
| 09/19 | 08:30 | Manufacturing Shipments (m/m) | Jul | -- | -- | -1.8 |
| 09/21 | 08:30 | Wholesale Trade (m/m) | Jul | -- | -- | -0.5 |
| 09/22 | 08:30 | Core CPI - Common (y/y) | Aug | -- | -- | 1.4 |
| 09/22 | 08:30 | Core CPI - Median (y/y) | Aug | -- | -- | 1.7 |
| 09/22 | 08:30 | Core CPI - Trim (y/y) | Aug | -- | -- | 1.3 |
| 09/22 | 08:30 | CPI, All items (m/m) | Aug | -- | -- | 0.0 |
| 09/22 | 08:30 | CPI, All items (y/y) | Aug | -- | -- | 1.2 |
| 09/22 | 08:30 | CPI, All items (index) | Aug | -- | -- | 130.4 |
| 09/22 | 08:30 | Retail Sales (m/m) | Jul | -- | -- | 0.1 |
| 09/22 | 08:30 | Retail Sales ex. Autos (m/m) | Jul | -- | -- | 0.7 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/18 | 10:00 | NAHB Housing Market Index | Sep | -- | 67.0 | 68.0 |
| 09/18 | 16:00 | Total Net TIC Flows (US$ bn) | Jul | -- | -- | 7.7 |
| 09/18 | 16:00 | Net Long-term TIC Flows (US$ bn) | Jul | -- | -- | 34.4 |
| 09/19 | 08:30 | Building Permits (000s a.r.) | Aug | -- | 1215.0 | 1230.0 |
| 09/19 | 08:30 | Current Account (US$ bn) | 2Q | -- | -108.5 | -116.8 |
| 09/19 | 08:30 | Export Prices (m/m) | Aug | -- | 0.3 | 0.1 |
| 09/19 | 08:30 | Housing Starts (000s a.r.) | Aug | 1175 | 1185 | 1155 |
| 09/19 | 08:30 | Housing Starts (m/m) | Aug | 1.7 | 2.6 | -4.8 |
| 09/19 | 08:30 | Import Prices (m/m) | Aug | -- | 0.3 | 0.1 |
| 09/20 | 07:00 | MBA Mortgage Applications (w/w) | SEP 15 | -- | -- | 9.9 |
| 09/20 | 10:00 | Existing Home Sales (mn a.r.) | Aug | 5.50 | 5.48 | 5.44 |
| 09/20 | 10:00 | Existing Home Sales (m/m) | Aug | 1.8 | 0.7 | -1.3 |
| 09/20 | 14:00 | **FOMC Interest Rate Meeting (%)** | **Sep 20** | **1.25** | **1.25** | **1.25** |
| 09/20 | 14:30 | **Federal Reserve Board Chairwoman Janet Yellen holds news conference** | | | | |
| 09/21 | 08:30 | Initial Jobless Claims (000s) | SEP 16 | 340 | -- | 284 |
| 09/21 | 08:30 | Continuing Claims (000s) | SEP 9 | -- | -- | 1944 |
| 09/21 | 08:30 | Philadelphia Fed Index | Sep | 17.0 | 16.2 | 18.9 |
| 09/21 | 10:00 | Leading Indicators (m/m) | Aug | -- | 0.2 | 0.3 |
| 09/22 | 06:00 | **Fed's Williams Speaks to Media at Swiss National Bank Event** | | | | |
| 09/22 | 09:30 | **Fed's George Speaks at Conference on Outlook for Oil** | | | | |
| 09/22 | 13:30 | **Fed's Kaplan Speaks at Dallas/Kansas City Fed Oil Conference** | | | | |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) |
| **To:** | "john.s.lee@opg.com"; "mmanning@ofina.on.ca"; "Linda.Smith@ofina.on.ca"; "Sheen.Liu@opg.com"; "brett.kichiy@ofina.on.ca"; "richard.wong@opg.com"; "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Kevin Shvarts |
| **Cc:** | Greg Lawrence (Scotiabank GBM); Fanny Doucet (Scotiabank GBM); Michael Costakos (Scotiabank GBM); Stephen Lepone (Scotiabank GBM); Tiffany Sun (Scotiabank GBM); Andrew Fredericks (Scotiabank GBM); Jenna Dicks (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 09/11/2017 |
| **Date:** | Monday, September 11, 2017 7:12:47 PM |
| **Attachments:** | OPG Weekly Indicative Spreads - September 11, 2017.xlsx<br>Ontario Power Generation-Sep-11-2017.pdf<br>estimates.pdf |

---

Good Evening,

Please find attached the excel copy of our indicative new issue spreads.

Thanks,

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a: http://www.scotiabank.com/email_disclaimer/email_espanol.html

| Bank Name | Scotiabank |
|---|---|
| Date | 11-Sep-17 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Aug-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 0.75% | | | | |
| Benchmark Yield | 2.38% | 2.04% | 1.75% | 1.55% | 0.10% | 0.16% | 0.18% | 0.20% |
| Curve Adjustment (bp) | | | | | | | | |
| Spread to GoC Curve (bp) | +157 | +113 | +88 | +63 | 2 | 1 | 1 | 3 |
| Re-Offered Yield | 3.95% | 3.17% | 2.63% | 2.18% | 0.12% | 0.17% | 0.19% | 0.23% |
| Commission (bp) | 4.00 | 5.00 | 7.00 | 10.00 | | | | |
| **All-in Yield** | **3.99%** | **3.22%** | **2.70%** | **2.28%** | **0.12%** | **0.17%** | **0.19%** | **0.23%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | +144 | +98 | +73 | - | 2 | 1 | 1 | - |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (A(L)/-/BBB+) | 149 | 105 | 80 | 60 | 2 | 1 | 1 | 1 |
| EPCOR (A(L)/-/A-) | 139 | 94 | 68 | - | 2 | 1 | 0 | - |

| Bank Name |
|---|
| Date |

| Indicative OPG New Issue Spreads | Cur | |
|---|---|---|
| | 30-year | 10-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% |
| Benchmark Yield | 2.28% | 1.88% |
| Curve Adjustment (bp) | | |
| Spread to GoC Curve (bp) | +155 | +112 |
| Re-Offered Yield | 3.83% | 3.00% |
| Commission (bp) | 4.00 | 5.00 |
| **All-in Yield** | **3.87%** | **3.05%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Hydro One (A(H)/A1/A+) | +142 | +97 |

| Other Comparables (S&P/Moody's/ DBRS) | Cur | |
|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Nova Scotia Power (A(L)/-/BBB+) | 147 | 104 |
| EPCOR (A(L)/-/A-) | 137 | 93 |

| Scotiabank |
| --- |
| 5-Sep-17 |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 1-Sep-22 | 1-Aug-19 |
| 1.00% | 0.75% |
| 1.57% | 1.35% |
| | |
| +87 | +60 |
| 2.44% | 1.95% |
| 7.00 | 10.00 |
| **2.51%** | **2.05%** |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| +72 | - |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 79 | 59 |
| 68 | - |

# Indicative New Issue Spreads

**Monday, September 11, 2017**

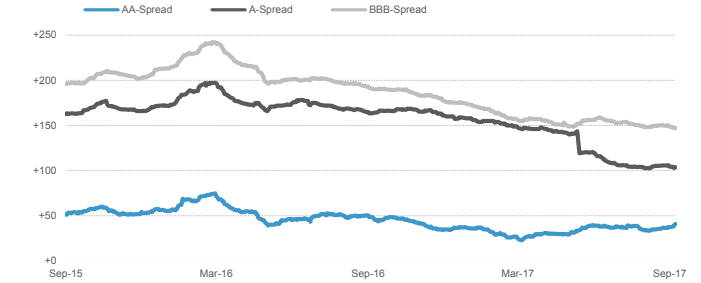
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 0.75% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Aug-19 | | 1-Sep-22 | | 1-Jun-27 | | 1-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.55% | 0.30% | 1.75% | 0.21% | 2.04% | 0.14% | 2.38% | 0.08% |
| **Indicative Spread** | **+63** | 3 | **+88** | 1 | **+113** | 1 | **+157** | 2 |
| Indicative Re-offer Yield | 2.18% | 0.33% | 2.63% | 0.20% | 3.17% | 0.13% | 3.95% | 0.11% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.281% | | 2.702% | | 3.219% | | 3.986% | |
| All-in Spread to GoC curve (bp) | +73 | | +95 | | +118 | | +161 | |

**RECENT NEW ISSUES**

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 7-Sep | Bank of Montreal | AA/AA/A1 | $1,750M | 7 | +92 |
| 6-Sep | Laurentian Bank of Canada | A(L)/BBB/- | $350M | 5 | +138 |
| 5-Sep | FortisAlberta Inc. | A(L)/A-/- | $200M | 30.0 | +139 |
| 5-Sep | 407 International Inc. | A/A/- | $500M | 27.0 | +137 |
| 5-Sep | 407 International Inc. | BBB/BBB/- | $300M | 5 | +89 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+63** | 3 | **+88** | 1 | **+113** | 1 | **+157** | 2 |
| Hydro One | A(H)/A3/A | - | | +73 | 1 | +98 | 1 | +144 | 2 |
| Nova Scotia Power | A(L)/-/BBB+ | +60 | 1 | +80 | -2 | +105 | -2 | +149 | -2 |
| EPCOR | A(L)/-/A- | - | | +68 | -2 | +94 | -1 | +139 | 4 |

**DEX UNIVERSE SPREADS**




## MARKET COMMENTARY

Although shortened, it was an eventful week in the Canadian corporate credit market. Four issuers priced a total of C$3.1BN, including $2.1BN of deposit note issuance. By week end, YTD new issue volumes reached $86.7B, 6% ahead of 2016's pace. It is worth mentioning that major CAD banks also issued outside of the domestic market this week with BMO pricing a multi-tranche US$2.5BN senior unsecured deal (2-yr FXD/FRN and 5-yr FXD/FRN) and TD executing a 3-yr US$1BN green bond transaction.

Outside of new issuance activity, we saw demand increase for safe haven assets due to geopolitical risks and natural disasters in the Atlantic. Corporate spreads in the secondary market closed the week ~3-5bps wider.

It was also a busy week for economic releases. On the back of recent strong data points, the BoC raised the overnight rate to 1.00% last week, with a moderately hawkish bias. Also topical last week was the fact that the Canadian economy added more jobs than expected providing the market with further guidance on timing of the next hike.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of September 11 – 15

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/11 | 08:15 | Housing Starts (000s a.r.) | Aug | 220.0 | 216.0 | 222.3 |
| 09/13 | 08:30 | Teranet - National Bank HPI (y/y) | Aug | -- | -- | 14.2 |
| 09/14 | 08:30 | New Housing Price Index (m/m) | Jul | -- | -- | 0.2 |
| 09/15 | 09:00 | Existing Home Sales (m/m) | Aug | -- | -- | -2.1 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/12 | 10:00 | JOLTS Job Openings (000s) | Jul | -- | 5975 | 6163 |
| 09/12 | 15:00 | **72nd Regular Session of the United Nations General Assembly** | | | | |
| 09/13 | 07:00 | MBA Mortgage Applications (w/w) | SEP 8 | -- | -- | 3.3 |
| 09/13 | 08:30 | PPI (m/m) | Aug | 0.3 | 0.3 | -0.1 |
| 09/13 | 08:30 | PPI ex. Food & Energy (m/m) | Aug | 0.2 | 0.2 | -0.1 |
| 09/13 | 14:00 | Treasury Budget (US$ bn) | Aug | -- | -130.5 | -42.9 |
| 09/14 | 08:30 | CPI (m/m) | Aug | 0.4 | 0.3 | 0.1 |
| 09/14 | 08:30 | CPI (y/y) | Aug | 1.8 | 1.8 | 1.7 |
| 09/14 | 08:30 | CPI (index) | Aug | -- | 245.4 | 244.8 |
| 09/14 | 08:30 | CPI ex. Food & Energy (m/m) | Aug | 0.2 | 0.2 | 0.1 |
| 09/14 | 08:30 | CPI ex. Food & Energy (y/y) | Aug | 1.6 | 1.6 | 1.7 |
| 09/14 | 08:30 | Initial Jobless Claims (000s) | SEP 9 | 325 | 300 | 298 |
| 09/14 | 08:30 | Continuing Claims (000s) | SEP 2 | 1950 | 1980 | 1940 |
| 09/15 | 08:30 | Empire State Manufacturing Index | Sep | -- | 18.0 | 25.2 |
| 09/15 | 08:30 | Retail Sales (m/m) | Aug | 0.0 | 0.1 | 0.6 |
| 09/15 | 08:30 | Retail Sales ex. Autos (m/m) | Aug | 0.3 | 0.5 | 0.5 |
| 09/15 | 09:15 | Capacity Utilization (%) | Aug | 76.7 | 76.8 | 76.7 |
| 09/15 | 09:15 | Industrial Production (m/m) | Aug | 0.2 | 0.1 | 0.2 |
| 09/15 | 10:00 | Business Inventories (m/m) | Jul | -- | 0.2 | 0.5 |
| 09/15 | 10:00 | U. of Michigan Consumer Sentiment | Sep P | 94.5 | 96.0 | 96.8 |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) on behalf of Greg Lawrence (Scotiabank GBM) |
| **To:** | "john.s.lee@opg.com"; Mike Manning; Linda Smith; "Sheen.Liu@opg.com"; Brett Kichiy; "richard.wong@opg.com"; Greg Lawrence (Scotiabank GBM); "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Michael Costakos (Scotiabank GBM) |
| **Cc:** | Greg Lawrence (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 9/11/2017 |
| **Date:** | Monday, September 11, 2017 6:17:48 PM |
| **Attachments:** | Ontario Power Generation-Sep-11-2017.pdf<br>estimates.pdf |

---

Please find attached our indicative new issue spreads.

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a:
http://www.scotiabank.com/email_disclaimer/email_espanol.html

# Indicative New Issue Spreads

**Monday, September 11, 2017**

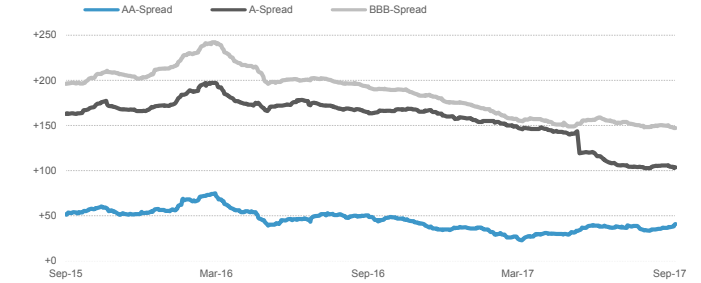
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 0.75% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Aug-19 | | 1-Sep-22 | | 1-Jun-27 | | 1-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.55% | 0.30% | 1.75% | 0.21% | 2.04% | 0.14% | 2.38% | 0.08% |
| **Indicative Spread** | **+63** | 3 | **+88** | 1 | **+113** | 1 | **+157** | 2 |
| Indicative Re-offer Yield | 2.18% | 0.33% | 2.63% | 0.20% | 3.17% | 0.13% | 3.95% | 0.11% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.281% | | 2.702% | | 3.219% | | 3.986% | |
| All-in Spread to GoC curve (bp) | +73 | | +95 | | +118 | | +161 | |

**RECENT NEW ISSUES**

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 7-Sep | Bank of Montreal | AA/AA/A1 | $1,750M | 7 | +92 |
| 6-Sep | Laurentian Bank of Canada | A(L)/BBB/- | $350M | 5 | +138 |
| 5-Sep | FortisAlberta Inc. | A(L)/A-/- | $200M | 30.0 | +139 |
| 5-Sep | 407 International Inc. | A/A/- | $500M | 27.0 | +137 |
| 5-Sep | 407 International Inc. | BBB/BBB/- | $300M | 5 | +89 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+63** | 3 | **+88** | 1 | **+113** | 1 | **+157** | 2 |
| Hydro One | A(H)/A3/A | - | | +73 | 1 | +98 | 1 | +144 | 2 |
| Nova Scotia Power | A(L)/-/BBB+ | +60 | 1 | +80 | -2 | +105 | -2 | +149 | -2 |
| EPCOR | A(L)/-/A- | - | | +68 | -2 | +94 | -1 | +139 | 4 |

**DEX UNIVERSE SPREADS**




## MARKET COMMENTARY

Although shortened, it was an eventful week in the Canadian corporate credit market. Four issuers priced a total of C$3.1BN, including $2.1BN of deposit note issuance. By week end, YTD new issue volumes reached $86.7B, 6% ahead of 2016's pace. It is worth mentioning that major CAD banks also issued outside of the domestic market this week with BMO pricing a multi-tranche US$2.5BN senior unsecured deal (2-yr FXD/FRN and 5-yr FXD/FRN) and TD executing a 3-yr US$1BN green bond transaction.

Outside of new issuance activity, we saw demand increase for safe haven assets due to geopolitical risks and natural disasters in the Atlantic. Corporate spreads in the secondary market closed the week ~3-5bps wider.

It was also a busy week for economic releases. On the back of recent strong data points, the BoC raised the overnight rate to 1.00% last week, with a moderately hawkish bias. Also topical last week was the fact that the Canadian economy added more jobs than expected providing the market with further guidance on timing of the next hike.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of September 11 – 15

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/11 | 08:15 | Housing Starts (000s a.r.) | Aug | 220.0 | 216.0 | 222.3 |
| 09/13 | 08:30 | Teranet - National Bank HPI (y/y) | Aug | -- | -- | 14.2 |
| 09/14 | 08:30 | New Housing Price Index (m/m) | Jul | -- | -- | 0.2 |
| 09/15 | 09:00 | Existing Home Sales (m/m) | Aug | -- | -- | -2.1 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 09/12 | 10:00 | JOLTS Job Openings (000s) | Jul | -- | 5975 | 6163 |
| 09/12 | 15:00 | **72nd Regular Session of the United Nations General Assembly** | | | | |
| 09/13 | 07:00 | MBA Mortgage Applications (w/w) | SEP 8 | -- | -- | 3.3 |
| 09/13 | 08:30 | PPI (m/m) | Aug | 0.3 | 0.3 | -0.1 |
| 09/13 | 08:30 | PPI ex. Food & Energy (m/m) | Aug | 0.2 | 0.2 | -0.1 |
| 09/13 | 14:00 | Treasury Budget (US$ bn) | Aug | -- | -130.5 | -42.9 |
| 09/14 | 08:30 | CPI (m/m) | Aug | 0.4 | 0.3 | 0.1 |
| 09/14 | 08:30 | CPI (y/y) | Aug | 1.8 | 1.8 | 1.7 |
| 09/14 | 08:30 | CPI (index) | Aug | -- | 245.4 | 244.8 |
| 09/14 | 08:30 | CPI ex. Food & Energy (m/m) | Aug | 0.2 | 0.2 | 0.1 |
| 09/14 | 08:30 | CPI ex. Food & Energy (y/y) | Aug | 1.6 | 1.6 | 1.7 |
| 09/14 | 08:30 | Initial Jobless Claims (000s) | SEP 9 | 325 | 300 | 298 |
| 09/14 | 08:30 | Continuing Claims (000s) | SEP 2 | 1950 | 1980 | 1940 |
| 09/15 | 08:30 | Empire State Manufacturing Index | Sep | -- | 18.0 | 25.2 |
| 09/15 | 08:30 | Retail Sales (m/m) | Aug | 0.0 | 0.1 | 0.6 |
| 09/15 | 08:30 | Retail Sales ex. Autos (m/m) | Aug | 0.3 | 0.5 | 0.5 |
| 09/15 | 09:15 | Capacity Utilization (%) | Aug | 76.7 | 76.8 | 76.7 |
| 09/15 | 09:15 | Industrial Production (m/m) | Aug | 0.2 | 0.1 | 0.2 |
| 09/15 | 10:00 | Business Inventories (m/m) | Jul | -- | 0.2 | 0.5 |
| 09/15 | 10:00 | U. of Michigan Consumer Sentiment | Sep P | 94.5 | 96.0 | 96.8 |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) on behalf of Greg Lawrence (Scotiabank GBM) |
| **To:** | "john.s.lee@opg.com"; Mike Manning; Linda Smith; "Sheen.Liu@opg.com"; Brett Kichiy; "richard.wong@opg.com"; Greg Lawrence (Scotiabank GBM); "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Michael Costakos (Scotiabank GBM) |
| **Cc:** | Greg Lawrence (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 9/5/2017 |
| **Date:** | Tuesday, September 05, 2017 8:04:36 PM |
| **Attachments:** | Ontario Power Generation-Sep-5-2017.pdf<br>estimates.pdf |

---

Please find attached our indicative new issue spreads.

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 68th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a:
http://www.scotiabank.com/email_disclaimer/email_espanol.html

# Indicative New Issue Spreads

**September-05-17**

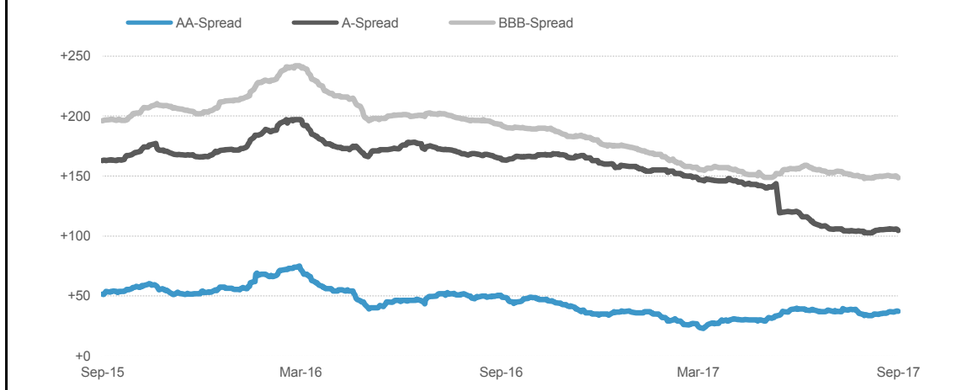
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 0.75% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Aug-19 | | 1-Sep-22 | | 1-Jun-27 | | 01-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.35% | 0.10% | 1.57% | 0.03% | 1.88% | -0.02% | 2.28% | -0.02% |
| **Indicative Spread** | **+60** | 0 | **+87** | 0 | **+112** | 0 | **+155** | -2 |
| Indicative Re-offer Yield | 1.95% | 0.10% | 2.44% | 0.01% | 3.00% | -0.04% | 3.83% | -0.01% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.052% | | 2.509% | | 3.050% | | 3.868% | |
| All-in Spread to GoC curve (bp) | +70 | | +94 | | +117 | | +159 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 30-Aug | Bank of Nova Scotia | AA/A+/A1 | $900M | 1 | +15 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+60** | 0 | **+87** | 0 | **+112** | 0 | **+155** | -2 |
| Hydro One | A(H)/A3/A | - | | +72 | 0 | +97 | 0 | +142 | 0 |
| Nova Scotia Power | A(L)/-/BBB+ | +59 | 0 | +79 | -3 | +104 | -3 | +147 | -4 |
| EPCOR | A(L)/-/A- | - | | +68 | -2 | +93 | -2 | +137 | 2 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

Last week the Canadian corporate credit market took a breather with only BNS pricing a 1-yr FRN for C$900MM at 1M CDOR + 15bps. We currently sit at C$83.6B total new issuance YTD, 8% ahead of 2016's pace. It was silent on the issuance front for major CAD banks in the domestic market as they exited their blackout periods over the last two weeks. Earnings were generally strong across the board, so the market will be carefully watching for any new deals.

On the data front, a main focus for market participants last week was the stronger than expected Canadian GDP print. With this release, the market has now received a string of strong CAD numbers, which increases the chances of a BOC move at their meeting tomorrow – this is also the view of Scotiabank Economics. South of the border, participants were able to digest slightly weaker than anticipated non-farm data in addition to strong manufacturing data.

Despite some geopolitical tension earlier in the week, market conditions remained stable overall with credit markets ending the week mixed. Corporate issuers in general are likely ready to pull the trigger as investors return to their seats this week.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Scotiabank™
Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of August 28 – September 1

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 08/29 | 08:30 | IPPI (m/m) | Jul | -- | -- | -1.0 |
| 08/29 | 08:30 | Raw Materials Price Index (m/m) | Jul | -- | -- | -3.7 |
| 08/30 | 08:30 | Current Account (C$ bn a.r.) | 2Q | -- | -- | -14.1 |
| 08/31 | 08:30 | Real GDP (m/m) | Jun | 0.1 | 0.1 | 0.6 |
| 08/31 | 08:30 | Real GDP (q/q a.r.) | 2Q | 3.2 | 3.1 | 3.7 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 08/28 | 08:30 | Wholesale Inventories (m/m) | Jul P | -- | 0.3 | 0.7 |
| 08/28 | 10:30 | Dallas Fed. Manufacturing Activity | Aug | -- | -- | 16.8 |
| 08/29 | 09:00 | S&P/Case-Shiller Home Price Index (m/m) | Jun | -- | -- | 0.1 |
| 08/29 | 09:00 | S&P/Case-Shiller Home Price Index (y/y) | Jun | -- | -- | 5.7 |
| 08/29 | 10:00 | Consumer Confidence Index | Aug | 120.5 | 120.0 | 121.1 |
| 08/30 | 07:00 | MBA Mortgage Applications (w/w) | AUG 25 | -- | -- | -0.5 |
| 08/30 | 08:15 | ADP Employment Report (000s m/m) | Aug | 190.0 | 180.0 | 177.7 |
| 08/30 | 08:30 | GDP (q/q a.r.) | 2Q S | 2.7 | 2.7 | 2.6 |
| 08/30 | 08:30 | GDP Deflator (q/q a.r.) | 2Q S | -- | 1.0 | 1.0 |
| 08/30 | 09:15 | **Fed's Powell Speaks at Large-Bank Directors Conference** | | | | |
| 08/31 | 08:30 | Initial Jobless Claims (000s) | AUG 26 | 235 | -- | 234 |
| 08/31 | 08:30 | Continuing Claims (000s) | AUG 19 | 1960 | -- | 1954 |
| 08/31 | 08:30 | PCE Deflator (m/m) | Jul | 0.1 | 0.1 | 0.0 |
| 08/31 | 08:30 | PCE Deflator (y/y) | Jul | 1.4 | 1.4 | 1.4 |
| 08/31 | 08:30 | PCE ex. Food & Energy (m/m) | Jul | 0.1 | 0.1 | 0.1 |
| 08/31 | 08:30 | PCE ex. Food & Energy (y/y) | Jul | 1.5 | 1.5 | 1.5 |
| 08/31 | 08:30 | Personal Spending (m/m) | Jul | 0.4 | 0.4 | 0.1 |
| 08/31 | 08:30 | Personal Income (m/m) | Jul | 0.2 | 0.3 | 0.0 |
| 08/31 | 09:45 | Chicago PMI | Aug | -- | 58.3 | 58.9 |
| 08/31 | 10:00 | Pending Home Sales (m/m) | Jul | 0.5 | 0.7 | 1.5 |
| 09/01 | 08:30 | Nonfarm Employment Report (000s m/m) | Aug | 200.0 | 180.0 | 209.0 |
| 09/01 | 08:30 | Unemployment Rate (%) | Aug | 4.3 | 4.3 | 4.3 |
| 09/01 | 08:30 | Average Hourly Earnings (m/m) | Aug | 0.2 | 0.2 | 0.3 |
| 09/01 | 08:30 | Average Hourly Earnings (y/y) | Aug | 2.6 | 2.6 | 2.5 |
| 09/01 | 08:30 | Average Weekly Hours | Aug | -- | 34.5 | 34.5 |
| 09/01 | 10:00 | Construction Spending (m/m) | Jul | 0.7 | 0.5 | -1.3 |
| 09/01 | 10:00 | ISM Manufacturing Index | Aug | 56.0 | 56.5 | 56.3 |
| 09/01 | 10:00 | U. of Michigan Consumer Sentiment | Aug F | -- | 97.3 | 97.6 |
| 09/01 | | Domestic Vehicle Sales (mn a.r.) | Aug | -- | 13.0 | 13.0 |
| 09/01 | | Household Employment Report (000s m/m) | Aug | -- | -- | 345.0 |
| 09/01 | | Total Vehicle Sales (mn a.r.) | Aug | 16.7 | 16.6 | 16.7 |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | Scotiabank - Global Banking and Markets (Scotiabank) |
| **To:** | "john.s.lee@opg.com"; "mmanning@ofina.on.ca"; "Linda.Smith@ofina.on.ca"; "Sheen.Liu@opg.com"; "brett.kichiy@ofina.on.ca"; "richard.wong@opg.com"; "ken.ryfa@opg.com"; "j.hahnparker@opg.com"; Kevin Shvarts; Ricky Lai |
| **Cc:** | Greg Lawrence (Scotiabank GBM); Fanny Doucet (Scotiabank GBM); Michael Costakos (Scotiabank GBM); Stephen Lepone (Scotiabank GBM); Tiffany Sun (Scotiabank GBM); Andrew Fredericks (Scotiabank GBM); Jenna Dicks (Scotiabank GBM) |
| **Subject:** | Ontario Power Generation - Indicative Issuance Spreads for 11/14/2017 |
| **Date:** | Tuesday, November 14, 2017 6:42:54 PM |
| **Attachments:** | OPG Weekly Indicative Spreads - November 14, 2017.xlsx<br>Ontario Power Generation-Nov-14-2017.pdf<br>estimates.pdf |

---

Good Evening,

Please find attached the excel copy of our indicative new issue spreads.

Thanks,

**D. Gregory Lawrence** | Managing Director | Canadian Debt Capital Markets | Scotia Capital Inc.

**Scotiabank | Global Banking and Markets**

40 King Street West, 56th floor, Toronto, Ontario, Canada M5H 1H1
T. 1.416.862.3032 M. 1.416.459.0332
greg.lawrence@scotiabank.com
scotiabank.com
Scotiabank is the business name used by Scotia Capital Inc.
Please click link: scdebtcapitalmarkets@scotiabank.com to e-mail sender for removal from this specific note/publication.

To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: https://www.unsubscribe.gwm.scotiabank.com?page=gwm

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Écosse, veuillez cliquer ici : https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=fr

Cette transmission peut contenir de l'information confidentielle et son utilisation par toute personne autre que la personne à laquelle cette transmission est destinée est interdite. Le présent courriel peut aussi contenir des renseignements importants pour les dossiers du ou des destinataires prévus. Pour plus de détails, veuillez vous diriger vers: http://www.scotiabank.com/email_disclaimer/email_francais.html

Para dejar de recibir mensajes electrónicos comerciales de The Bank of Nova Scotia en Canadá, haga clic aquí: https://cancelarsuscripcion.scotiabank.com?entid=BNS&buid=SBNK

Para dejar de recibir mensajes electrónicos comerciales de otras entidades incluidas en la lista adjunta, haga clic aquí: https://www.unsubscribe.gwm.scotiabank.com?page=gwm&lang=es

Este correo electrónico puede contener información confidencial cuyo uso por parte de personas distintas de los destinatarios del mismo está prohibido. El mensaje puede tener también datos importantes para los archivos del(de los) destinatario(s) a quien(es) está dirigido. Para más detalles, por favor dirigirse a: http://www.scotiabank.com/email_disclaimer/email_espanol.html

| Bank Name | Scotiabank |
|---|---|
| Date | 14-Nov-17 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Nov-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 1.25% | | | | |
| Benchmark Yield | 2.28% | 1.97% | 1.69% | 1.46% | 0.03% | 0.03% | 0.04% | 0.04% |
| Curve Adjustment (bp) | | | | | | | | |
| Spread to GoC Curve (bp) | +151 | +107 | +82 | +58 | -3 | -1 | -1 | -1 |
| Re-Offered Yield | 3.79% | 3.04% | 2.51% | 2.04% | 0.00% | 0.02% | 0.03% | 0.03% |
| Commission (bp) | 4.00 | 5.00 | 7.00 | 10.00 | | | | |
| **All-in Yield** | **3.83%** | **3.09%** | **2.58%** | **2.14%** | **0.00%** | **0.02%** | **0.03%** | **0.03%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A(H)/A3/A) | +124 | +83 | +58 | - | -5 | 0 | -1 | - |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (A(L)/-/BBB+) | 134 | 93 | 68 | 49 | -3 | 0 | 0 | 0 |
| EPCOR (A(L)/-/A-) | 124 | 83 | 58 | - | -5 | -1 | 0 | - |

| Bank Name |
| --- |
| Date |

| Indicative OPG New Issue Spreads | Cur | |
| --- | --- | --- |
| | 30-year | 10-year |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% |
| Benchmark Yield | 2.25% | 1.94% |
| Curve Adjustment (bp) | | |
| Spread to GoC Curve (bp) | +154 | +108 |
| Re-Offered Yield | 3.79% | 3.02% |
| Commission (bp) | 4.00 | 5.00 |
| **All-in Yield** | **3.83%** | **3.07%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Cur | |
| --- | --- | --- |
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Hydro One (A(H)/A1/A+) | +129 | +83 |

| Other Comparables (S&P/Moody's/ DBRS) | Cur | |
| --- | --- | --- |
| Spread to GoC Curve (bp) | 30-year | 10-year |
| Nova Scotia Power (A(L)/-/BBB+) | 137 | 93 |
| EPCOR (A(L)/-/A-) | 129 | 84 |

| Scotiabank |
| --- |
| 6-Nov-17 |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 1-Sep-22 | 1-Nov-19 |
| 1.00% | 1.25% |
| 1.65% | 1.42% |
| | |
| +83 | +59 |
| 2.48% | 2.01% |
| 7.00 | 10.00 |
| **2.55%** | **2.11%** |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| +59 | - |

| rent | |
| --- | --- |
| **5-year** | **2-year** |
| 68 | 49 |
| 58 | - |

# Indicative New Issue Spreads

**Tuesday, November 14, 2017**

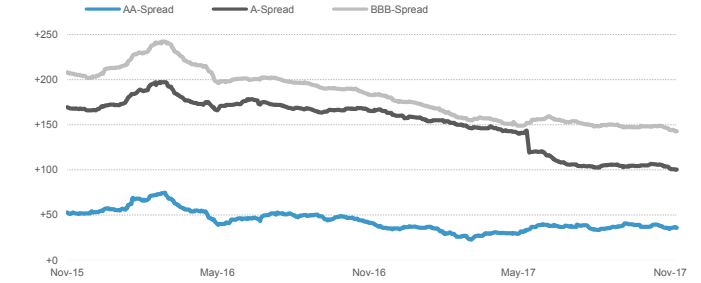
| NEW ISSUE SPREADS | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|
| Canada Benchmark | 1.25% | | 1.00% | | 1.00% | | 2.75% | |
| | 1-Nov-19 | | 1-Sep-22 | | 1-Jun-27 | | 1-Dec-48 | |
| Interpolated Yield (GoC Yield + Roll) | 1.46% | 0.04% | 1.69% | 0.04% | 1.97% | 0.03% | 2.28% | 0.03% |
| **Indicative Spread** | **+58** | -1 | **+82** | -1 | **+107** | -1 | **+151** | -3 |
| Indicative Re-offer Yield | 2.04% | 0.03% | 2.51% | 0.03% | 3.04% | 0.02% | 3.79% | 0.00% |
| Agency Commission | $0.20 | | $0.35 | | $0.40 | | $0.50 | |
| Agency Commission BPS | +10 | | +7 | | +5 | | +4 | |
| All-in Canada Yield | 2.141% | | 2.583% | | 3.093% | | 3.831% | |
| All-in Spread to GoC curve (bp) | +68 | | +89 | | +112 | | +155 | |

## RECENT NEW ISSUES

| Date | Issuer | Ratings | Size | Term | Spread |
|---|---|---|---|---|---|
| 9-Nov | Toronto Hydro Corporation | A/A/- | $200M | 30.3 | +121 |
| 9-Nov | Laurentian Bank NHA MBS | AAA/AAA/Aaa | $201M | 4.9 | +53 |
| 6-Nov | Bank of Nova Scotia | AA/A+/A1 | $2,000M | 5.0 | +72 |

| COMPARABLES | Ratings | 2 Year | WoW | 5 Year | WoW | 10 Year | WoW | 30 Year | WoW |
|---|---|---|---|---|---|---|---|---|---|
| | DBRS/Moody's/S&P | | | | | | | | |
| **Ontario Power Generation** | **A(L)/-/BBB+** | **+58** | -1 | **+82** | -1 | **+107** | -1 | **+151** | -3 |
| Hydro One | A(H)/A3/A | - | | +58 | -1 | +83 | 0 | +124 | -5 |
| Nova Scotia Power | A(L)/-/BBB+ | +49 | 0 | +68 | 0 | +93 | 0 | +134 | -3 |
| EPCOR | A(L)/-/A- | - | | +58 | 0 | +83 | -1 | +124 | -5 |

## DEX UNIVERSE SPREADS




## MARKET COMMENTARY

Last week saw healthy supply in the Canadian new issue market with three separate issuers printing ~$2.4BN. By the end of the week total corporate issuance reached ~$113BN, 19% ahead of last year. We had a very heavy volume week particularly in the bank space, credit spreads in Canada are marginally wider WoW but outperformed the US, with IG29 about 3 ticks wider on the week to 56.5.

South of the border we again saw a number of deals relevant to Canada hit the tape with Apple, Kellogg, Suncor, UPS, Precision Drilling, and Daimler Finance coming to market. Apple Inc. and UPS both executed multi tranche transactions – Apple Inc. priced US$7BN across 6 tranches and UPS priced US$5.2BN across 7 tranches. Kellogg and Suncor were both focused on issuance further out of the curve with Kellogg executing a US$600MM 10-yr transaction and Suncor pricing a US$750MM 30-yr deal. Daimler Finance priced a 3 year $1.5B dual tranche FXD/FRN transaction in USD which swapped back to Canada at ~ GOC + 61.

Outside of new issue activity, market participants seemed to be wary of geopolitical events overseas in addition to ongoing tax reform drama south of the border. On the economic front, Poloz (speaking in Montreal) maintained a neutral tone on interest rate moves and defended the use of inflation targets. He also reinforced the bank's message that it was monitoring wage growth and inflation, as well as economic capacity to see how the economy was adjusting to prior rate hikes.

## CONTACT INFORMATION


Greg Lawrence
Managing Director
Debt Capital Markets
Phone: 416-862-3032
Fax: 416-863-7527
greg.lawrence@scotiabank.com

Scotiabank™
Derek Holt, VP & Head of Capital Markets Economics
416.863.7707
derek.holt@scotiabank.com



# Estimates for the week of November 13 – 17

## CANADA

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 11/15 | 08:30 | Teranet - National Bank HPI (y/y) | Oct | -- | -- | 11.4 |
| 11/15 | 09:00 | Existing Home Sales (m/m) | Oct | -- | -- | 2.1 |
| 11/15 | 18:45 | **Bank of Canada's Wilkins Gives Speech in New York** | | | | |
| 11/16 | 08:30 | International Securities Transactions (C$ bn) | Sep | -- | -- | 9.8 |
| 11/16 | 08:30 | Manufacturing Shipments (m/m) | Sep | -0.2 | -- | 1.6 |
| 11/16 | 08:30 | **ADP Publishes First-Ever Canada Payrolls Report** | | | | |
| 11/16 | 15:00 | **ECB's Constancio Speaks in Ottawa** | | | | |
| 11/17 | 08:30 | CPI, All items (m/m) | Oct | 0.0 | -- | 0.2 |
| 11/17 | 08:30 | CPI, All items (y/y) | Oct | 1.3 | -- | 1.6 |
| 11/17 | 08:30 | CPI, All items (index) | Oct | -- | -- | 130.8 |
| 11/17 | 08:30 | Core CPI - Common (y/y) | Oct | -- | -- | 1.5 |
| 11/17 | 08:30 | Core CPI - Median (y/y) | Oct | -- | -- | 1.8 |
| 11/17 | 08:30 | Core CPI - Trim (y/y) | Oct | -- | -- | 1.5 |

## UNITED STATES

| Date | Time | Indicator | Period | BNS | Consensus | Latest |
|---|---|---|---|---|---|---|
| 11/13 | 14:00 | Treasury Budget (US$ bn) | Oct | -- | -50.0 | 8.0 |
| 11/14 | 03:05 | **Fed's Evans Speaks at ECB Conference in Frankfurt** | | | | |
| 11/14 | 05:00 | **Yellen Speaks on ECB Panel with Draghi, Kuroda, and Carney** | | | | |
| 11/14 | 08:15 | **Fed's Bullard Speaks on U.S. Economy in Louisville** | | | | |
| 11/14 | 08:30 | PPI (m/m) | Oct | 0.1 | 0.1 | 0.4 |
| 11/14 | 08:30 | PPI ex. Food & Energy (m/m) | Oct | 0.2 | 0.2 | 0.4 |
| 11/14 | 13:05 | **Fed's Bostic Speaks on Economic Outlook and Monetary Policy** | | | | |
| 11/15 | 03:00 | **Fed's Evans Speaks at European Conference in London** | | | | |
| 11/15 | 07:00 | MBA Mortgage Applications (w/w) | NOV 10 | -- | -- | 0.0 |
| 11/15 | 08:30 | CPI (m/m) | Oct | 0.0 | 0.1 | 0.5 |
| 11/15 | 08:30 | CPI (y/y) | Oct | 2.0 | 2.0 | 2.2 |
| 11/15 | 08:30 | CPI (index) | Oct | -- | -- | 246.8 |
| 11/15 | 08:30 | CPI ex. Food & Energy (m/m) | Oct | 0.2 | 0.2 | 0.1 |
| 11/15 | 08:30 | CPI ex. Food & Energy (y/y) | Oct | 1.7 | 1.7 | 1.7 |
| 11/15 | 08:30 | Empire State Manufacturing Index | Nov | -- | 25.8 | 30.2 |
| 11/15 | 08:30 | Retail Sales (m/m) | Oct | -0.1 | 0.1 | 1.6 |
| 11/15 | 08:30 | Retail Sales ex. Autos (m/m) | Oct | 0.1 | 0.2 | 1.0 |
| 11/15 | 10:00 | Business Inventories (m/m) | Sep | -- | 0.0 | 0.7 |
| 11/15 | 16:00 | Total Net TIC Flows (US$ bn) | Sep | -- | -- | 125.0 |
| 11/15 | 16:00 | Net Long-term TIC Flows (US$ bn) | Sep | -- | -- | 67.2 |
| 11/16 | 08:30 | Export Prices (m/m) | Oct | -- | 0.3 | 0.7 |
| 11/16 | 08:30 | Import Prices (m/m) | Oct | -- | 0.3 | 0.7 |
| 11/16 | 08:30 | Initial Jobless Claims (000s) | NOV 11 | 240 | -- | 239 |
| 11/16 | 08:30 | Continuing Claims (000s) | NOV 4 | 1900 | -- | 1901 |
| 11/16 | 08:30 | Philadelphia Fed Index | Nov | 25.0 | 24.0 | 27.9 |
| 11/16 | 09:10 | **Fed's Mester Delivers Keynote Address at Cato Conference** | | | | |
| 11/16 | 09:15 | Capacity Utilization (%) | Oct | -- | 76.3 | 76.0 |
| 11/16 | 09:15 | Industrial Production (m/m) | Oct | 0.4 | 0.5 | 0.3 |
| 11/16 | 10:00 | NAHB Housing Market Index | Nov | -- | 68.0 | 68.0 |
| 11/16 | 13:10 | **Fed's Kaplan Speaks in Houston** | | | | |
| 11/16 | 15:45 | **Fed's Brainard Delivers Keynote at OFR FinTech Conference** | | | | |
| 11/16 | 16:45 | **Fed's Williams Speaks at Asia Economic Policy Conference** | | | | |
| 11/17 | 08:30 | Building Permits (000s a.r.) | Oct | -- | 1239 | 1225 |
| 11/17 | 08:30 | Housing Starts (000s a.r.) | Oct | 1170 | 1186 | 1127 |
| 11/17 | 08:30 | Housing Starts (m/m) | Oct | 3.8 | 5.2 | -4.7 |
| 11/17 | 17:30 | **Fed's Williams Speaks with Reporters** | | | | |

This report has been prepared by Scotiabank Economics as a resource for the clients of Scotiabank. Opinions, estimates and projections contained herein are our own as of the date hereof and are subject to change without notice. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. Neither Scotiabank nor any of its officers, directors, partners, employees or affiliates accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or its contents.

These reports are provided to you for informational purposes only. This report is not, and is not constructed as, an offer to sell or solicitation of any offer to buy any financial instrument, nor shall this report be construed as an opinion as to whether you should enter into any swap or trading strategy involving a swap or any other transaction. The information contained in this report is not intended to be, and does not constitute, a recommendation of a swap or trading strategy involving a swap within the meaning of U.S. Commodity Futures Trading Commission Regulation 23.434 and Appendix A thereto. This material is not intended to be individually tailored to your needs or characteristics and should not be viewed as a "call to action" or suggestion that you enter into a swap or trading strategy involving a swap or any other transaction. Scotiabank may engage in transactions in a manner inconsistent with the views discussed this report and may have positions, or be in the process of acquiring or disposing of positions, referred to in this report.

Scotiabank, its affiliates and any of their respective officers, directors and employees may from time to time take positions in currencies, act as managers, co-managers or underwriters of a public offering or act as principals or agents, deal in, own or act as market makers or advisors, brokers or commercial and/or investment bankers in relation to securities or related derivatives. As a result of these actions, Scotiabank may receive remuneration. All Scotiabank products and services are subject to the terms of applicable agreements and local regulations. Officers, directors and employees of Scotiabank and its affiliates may serve as directors of corporations.

Any securities discussed in this report may not be suitable for all investors. Scotiabank recommends that investors independently evaluate any issuer and security discussed in this report, and consult with any advisors they deem necessary prior to making any investment.

**This report and all information, opinions and conclusions contained in it are protected by copyright. This information may not be reproduced without the prior express written consent of Scotiabank.**

™ Trademark of The Bank of Nova Scotia. Used under license, where applicable.

Scotiabank, together with "Global Banking and Markets", is a marketing name for the global corporate and investment banking and capital markets businesses of The Bank of Nova Scotia and certain of its affiliates in the countries where they operate, including, Scotiabanc Inc.; Citadel Hill Advisors L.L.C.; The Bank of Nova Scotia Trust Company of New York; Scotiabank Europe plc; Scotiabank (Ireland) Limited; Scotiabank Inverlat S.A., Institución de Banca Múltiple, Scotia Inverlat Casa de Bolsa S.A. de C.V., Scotia Inverlat Derivados S.A. de C.V. – all members of the Scotiabank group and authorized users of the Scotiabank mark. The Bank of Nova Scotia is incorporated in Canada with limited liability and is authorised and regulated by the Office of the Superintendent of Financial Institutions Canada. The Bank of Nova Scotia is authorised by the UK Prudential Regulation Authority and is subject to regulation by the UK Financial Conduct Authority and limited regulation by the UK Prudential Regulation Authority. Details about the extent of The Bank of Nova Scotia's regulation by the UK Prudential Regulation Authority are available from us on request. Scotiabank Europe plc is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

Scotiabank Inverlat, S.A., Scotia Inverlat Casa de Bolsa, S.A. de C.V., and Scotia Derivados, S.A. de C.V., are each authorized and regulated by the Mexican financial authorities.

Not all products and services are offered in all jurisdictions. Services described are available in jurisdictions where permitted by law.

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Mike Manning |
| **Cc:** | Ken Kandeepan |
| **Subject:** | Please give me a call re: - Protection Agreement and OPG Monday Board meeting. |
| **Date:** | Friday, November 17, 2017 3:39:39 PM |

---

**John Lee | Vice President Treasurer |**
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Subject:** | Possible DM Briefing on Monday |
| **Date:** | Friday, November 17, 2017 4:13:20 PM |

Stephen, Malle, Toby,

Just a head's up, our DMO will likely be organizing another meeting with the three Deputies (Finance, TBS, Energy), on Monday, November 20, likely sometime between 11am and 12:30pm and likely somewhere in Macdonald Block (900 Bay Street). The purpose of Monday's meeting will be to bring everyone up to speed on the outstanding issues on the Protection/Process Agreements. I expect an invite to follow, but you may want to hold that time in your calendars for now.

Thank you,

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning; Gadi Mayman; Anna Strathy |
| **Cc:** | Hresa Gavaris |
| **Subject:** | Pre-meeting \| Provincial Protection Agreement |

---

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Mike Manning; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Keley Katona (ENERGY); Scott Nelms (ENERGY) |
| **Cc:** | Gadi Mayman |
| **Subject:** | Pre-meeting \| Provincial Protection Agreement |

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning; Gadi Mayman; Anna Strathy |
| **Cc:** | Hresa Gavaris |
| **Subject:** | Pre-meeting \| Provincial Protection Agreement |

---

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Tom McKinlay (MAG); Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan; John Kim; Tim Christie (ENERGY); Scott Nelms (ENERGY) |
| **Subject:** | Preparing the Financing Plan |
| **Date:** | Thursday, September 14, 2017 6:17:33 PM |
| **Attachments:** | 23156513-v2-Financing Plan Outline.DOCX |

Hi,
John Lee reached out to me earlier in the week to discuss how refinancings would be expected to operate under the Financing Plan. That led to a broader conversation about the role of the Financing Plan under the OFHPA, its purpose and contents. It seemed clear from that conversation that OPG is struggling with what is expected/required under the legislation in relation to the Financing Plan.
The Financing Plan is the mechanism under the OFHPA that disciplines the funding and related decisions to be undertaken by OPG under the legislation. While the General Regulation provides some guidance, it does not provide a roadmap of key considerations that will impact whether the root purposes of the legislation (e.g., fairness, alignment and efficiencies) are achieved. While the OFHPA clearly places the obligation to create the Financing Plan on OPG's shoulders, the contents will be key to whether the Province's objectives will be achieved.
Attached is an internal outline we prepared to scope out the sorts of things that the Financing Plan should probably address – based on the terms of the legislation and regulation as well as having regard to the broader themes of the legislation in the capital markets context. You may wish to consider whether sharing the Province's expectations and perspectives with OPG in this sort of way would be constructive and help to break through the barriers that seem to exist in OPG preparing the Financing Plan.
Please note that this version is not complete or particularly refined, but nevertheless I hope it is instructive a possible starting point, to the extent the Province wishes to step in on this.
I will be pleased to discuss this with you if it makes sense.
Regards, Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

## Financing Plan

A. Background

1. The OFHPA

Subsection 22(1) of the *Ontario Fair Hydro Plan Act* (OFHPA) requires the Financial Services Manager (FSM) to ensure that funding obligations are only incurred in a manner consistent with the Financing Plan. Under subsection 21(1) of the OFHPA, the FSM is required to prepare the Financing Plan in writing to evaluate whether potential funding obligations should be incurred by a financing entity (FE) to finance or refinance an investment interest.

Other than the principles described in subsection 21(3) of the OFHPA, the limitations set forth in subsection 21(4) of the OFHPA and the more detailed principles and assumptions set out in section 14 of the General Regulation, the OFHPA and the General Regulation offer limited guidance to OPG in preparing the Financing Plan.

The objectives of the Financing Plan can be discerned from the applicable purposes and principles described in the OFHPA, including:

- the overall purpose of the OFHPA set forth in section 3 of the OFHPA, including:
    - to ensure a fair allocation of clean energy costs and benefits over time
    - to align clean energy costs with clean energy benefits to achieve fairness over time
- subsection 21(3) of the OFHPA, including:
    - the reasonable alignment of actual plus estimated finance amounts becoming due and payable during a reference period with the applicable “fair allocation amount” (FAA) for the reference period (subject to any applicable readjustment amount)
    - incurrences that are “reasonable”, “cost effective” and “reflect prevailing market terms and conditions”.

Subsection 14(1) of the General Regulation specifically directs the FSM to make “reasonable assumptions” regarding a list of items; namely:

- IESO deferrals for future months, based on the most recent calculation of the FAA
- future transfers of specified portions of the regulatory asset
- maturities of funding obligations
- cash flow requirements to meet contractual obligations associated with funding obligations
- descriptions of current funding options, including terms and conditions
- descriptions of currency and interest rate hedging programs, if applicable

- financing entity expenses
- interest rates
- the need for and the establishment of financing reserve accounts and capital accounts.

Subsection 14(2) of the General Regulation lists additional principles applicable to preparing the Financing Plan; namely:

- seeking the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of the size and type contemplated by the Financing Plan
- applying the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests
- considering the interests of specified consumers with respect to stable and predictable electricity rates
- acting as any reasonably prudent financial services manager would act in similar circumstances
- dealing with related parties on arm's length terms.

2. Basic Functions of the Financing Plan

The Financing Plan should establish the approach, parameters and methods that will apply to the FSM in elaborating on and achieving the broad principles set out in the OFHPA and the General Regulation, which will more specifically define the FSM's activities in connection with financings. As such, the Financing Plan will set out an objective basis for establishing and corroborating reasonable expectations and practices considered by the FSM, and disclosed to the Minister of Energy, as being appropriate to achieve fairness and efficiency in the implementation of the anticipated funding platform. From OPG's perspective, the Financing Plan serves to establish the basis to demonstrate that it has discharged its duties and obligations as FSM, even if the actual outcomes obtained by following and reasonably applying the principles, approach, parameters and methods set out in the Financing Platform differ from those contemplated in the OFHPA.

Broadly, the matters for consideration in developing the Financing Plan include: establishing and prioritizing the key objectives contemplated in subsection 21(3) of the OFHPA; mitigating identified risks that run counter to the Financing Plan; establishing the basis for modelling and forecasting financing decisions; establishing the basis for settling the terms and conditions of funding obligations; achieving best available pricing; avoiding potential conflicts of interest; and anticipating key variables and the impact of potential changes of circumstance.

B. Anticipated Contents of the Financing Plan

The following is an overview of some specific considerations that should be addressed in the Financing Plan (and in turn in establishing and implementing a related capital markets platform

for any financing entity), in furtherance of the purposes and principles contemplated in the OFHPA and section 14 of the General Regulation:

1. Key Objectives

    a. Alignment to Achieve Fairness – A key presumption of the OFHPA is that funding obligations will be incurred so that finance amounts for a reference period (i.e., payments and repayments in relation to funding obligations) will approximate the applicable FAA for the reference period. If finance amounts are less than the FAA for a reference period, the amount of clean energy adjustments for that period will under-shoot the economic model, with the result that specified consumers in that reference period would not bear their fair share of the clean energy costs. Aside from issues of unfairness that would arise, the "capacity" of the financing model could be adversely affected to the extent that finance amounts undershoot the applicable fair allocation amounts. On the other hand, if finance amounts are greater than the FAA for a reference period, the amount of clean energy adjustments for that period will exceed the fair level, resulting in the ratepayers of that period bearing a disproportionate burden of the clean energy costs. The Financing Plan should specifically develop and document the forethought and diligence required to be applied by the FSM to achieve the alignment objective.

    b. Efficiency – Inherent in the FSM's role is a decision-making function that requires the FSM to apply judgment as to whether the incurrence of a particular funding obligation and mitigation strategy is reasonable, cost effective and reflective of market terms and conditions (if applicable), having regard to then current circumstances, expected outcomes, available alternatives and the overall alignment and fairness objectives. The Financing Plan should be responsive to the need to balance efficiency considerations (e.g., costs to be passed on to ratepayers as clean energy adjustments) against the absolute achievement of the alignment objective. In other words, mitigating every conceivable risk and managing the capital markets program in order to achieve a perfect alignment could be unduly costly, limiting and impractical. Recognizing this, the Financing Plan may contemplate outer boundaries, within which there would be "reasonable alignment" as contemplated in paragraph 1 of subsection 21(3) of the OFHPA (i.e., within some reasonable range of proximity to the applicable FAA), and outside of which there would be an unacceptably disproportionate bearing of clean energy costs by the ratepayers of a particular reference period. For example, if a reasonable assessment of a particular risk would suggests that future finance amounts for a reference period may fall outside of the 'reasonable range' relative to the applicable FAA for the reference period, the Financing Plan may, notwithstanding the associated costs, require mitigation of that risk to ensure that those finance amounts stay within that reasonable range in order to avoid what would otherwise be a patently unfair allocation of clean energy costs to the ratepayers of that particular reference period. Specific examples of that sort of trade-off and mitigation scenario are contemplated below.

2. Risk Mitigation

    a. Duration Mismatch Risk – There is an inherent duration mismatch between available cash flows (from clean energy adjustments – limited by FAAs, which

are expected to not become positive until around 2027) and repayment terms (i.e., since >10 year maturities for CAD "amortizing" structured financing instruments would be limited, warehousing, liquidity and refinancing requirements should be anticipated). The Financing Plan should set out the FSM's plan to address the duration mismatch, including by considering the availability of third party standby liquidity facilities or mandatory extendable terms. The Financing Plan should refer to the schedule of FAAs and address how debt is anticipated to be incurred to fund anticipated IESO deferrals in order to address and mitigate the duration mismatch risk. Among other things, if the FSM determines that short maturing debt can be incurred in circumstances where a refinancing is reasonably anticipated, consideration should be given to spread maturities so that if a market disruption were to occur the payment impact on a particular group of ratepayers (i.e., through excessive CEAs, corresponding to a forced repayment of principal amounts otherwise refinanced) would be mitigated. For example, it may be appropriate to incorporate a shadow FAA concept (e.g., FAA + Factor)), such that in setting maturities for debt incurred on the assumption that refinancings would be possible, principal repayments in any reference period resulting from a market disruption would nevertheless not exceed such shadow FAA.

b. Depth of Market and Concentration Risk – The FSM should broadly explore potential funding sources and the relative costs and benefits of each. An assessment of each rated, capital markets source of funding should take into account the all-in costs of structuring and implementing such a financing transaction (including the costs associated with a senior/subordinated capital structure, currency and interest rate hedging, credit enhancements, liquidity reserves, underwriting commissions, rating agency and other incidental costs, etc.) and the relative availability of replacement financing transactions on similar terms, to the extent there is a duration mismatch based on the tenor of the capital markets instruments available to be issued. Private market alternatives (such as one-off or facility-based fundings by institutional investors, such as pension funds and insurance companies) should be considered as a source of primary funding or alternatively in connection with possible take-out fundings. The expected cost, availability, liquidity and priorities associated with acquiring hedging instruments, in order to mitigate currency exposures arising under fundings in currencies other than CAD, should be taken into account. The Financing Plan should describe the basis on which the FSM will evaluate each source of funding and the relative importance of identified decision criteria. The financing alternatives contemplated by the Financing Plan should be robust and allow for migration from one funding source to another, based on availability and reasonably foreseeable changes in circumstances. The diversification of funding sources should be considered a significant objective of the Financing Plan, including to address market capacity issues arising on further financings and refinancings.

c. Currency Mismatch Risk – If the payments arising under a funding obligation or any related finance amounts becoming payable are to be denominated in a currency other than CAD, the FSM should hedge that obligation to reflect an equivalent CAD value payment based on the relevant foreign exchange rates prevailing at the time funding obligation is incurred. The type of hedging instruments acquired for this purpose should be selected based on counterparty credit considerations, relative pricing and costs, liquidity considerations, terms

and conditions and the availability of replacement hedge counterparties to the extent there is a mismatch in the tenor of the instrument or to address early termination scenarios.

d. Interest Rate Risk – The interest costs applicable to outstanding funding obligations will be passed directly through to ratepayers as CEAs. The Financing Plan should establish objectives and parameters to guide FSM decisions made to mitigate potential interest rate volatility and increases over time, including in connection with any anticipated refinancing of outstanding funding obligations. The smoothing of interest costs passed through to ratepayers across generations should be a guiding principle, although attainment should be measured against the period costs of acquiring appropriate hedges to mitigate future interest rate changes. The parameters may, for example, set boundaries (e.g., collars or straddle strategies) in order to hedge against extreme interest rate movements, to the extent they could result in very significant increases in the funding costs to be passed through to ratepayers in a future generation.

e. Counterparty Risk – To the extent that the timely payment of funding obligations will depend on performance by one or more third parties (e.g., swap counterparties, liquidity providers or obligors under unfunded credit enhancement arrangements), the availability and cost of replacement providers should be considered at the time of incurrence and significant risks of materially increased costs or the potential unavailability of obtaining alternative providers should be considered and mitigated wherever possible if cost effective. For large, concentrated counterparty positions, a credit risk management model should be adopted to measure and mitigate counterparty exposure, including by requiring the posting of collateral margin against the market value of obligations owing from the counterparty from time to time. Overall counterparty concentration limitations, applicable across related entity groups, should be adopted so that large counterparty obligations are bifurcated or syndicated in order to stay within such limits.

f. Cash Flow Shortfall Risk – To the extent that clean energy adjustments may be insufficient to meet funding obligations (e.g., due to a potential delay in recovering shortfalls through the “true-up” mechanism), cash reserves and the implied costs associated with “negative carry” on cash deposits should be considered.

3. Contingency Planning – On-going contingency planning and risk reassessment should be undertaken to evaluate and respond to identified risks. The Financing Plan should establish a calendar for and list of action items to periodically review and assess identified risks; assess the likelihood of extreme scenarios arising; and consider alternative methods of risk mitigation, given the relative costs and benefits and implementation requirements.

4. Modelling and Forecasting Requirements

a. Estimates and Forecasting – Financial estimates should address both expected outcomes and reasonably foreseeable circumstances and attendant volatilities. Probability assessments and valuations should be based on best available statistical and market information and utilize generally accepted statistical

modelling and valuation methods and conventions. The Financing Plan should set out and describe the basis for all significant underlying assumptions. Macro economic considerations should be assessed based on available market data and trends. If the alignment of potential finance amounts could significantly vary from an applicable FAA for a reference period depending on the accuracy or realization of such assumptions, contingency planning and risk mitigation assessments should be undertaken based on best available estimates and forecasts in order to develop mitigation strategies to limit the effect of mismatches and variability.

b. Reliance on Experts – The FSM should engage recognized experts in relation to any aspect of the modelling, estimating, valuing and forecasting activities contemplated by the Financing Plan wherever the FSM does not have satisfactory internal capabilities. Experts should be engaged specifically for the purposes contemplated by the Financing Plan and their work should be separated from and accounted for separately from any other engagements undertaken for the FSM for it own account.

c. Frequency of Updates and Revisions – Significant estimates, valuations and forecasts should be updated not less frequently than [quarterly]. Models should be updated and rerun not less frequently than [quarterly].

d. Recalculation of "fair allocation amounts" – If the FAAs are recalculated (as contemplated in subsection 20(5) of the OFHPA), future incurrences will be affected. While past incurrences and related clean energy adjustments are unaffected by such a recalculation, under subsection 22(4) and subsection 20(6) of the OFHPA, respectively, the recalculated FAAs would affect the funding and related decisions of the FSM going forward. Accordingly, the FSM will need to adapt and adjust the Financing Plan upon any FAA recalculation, and reflect such changes in relation of future incurrences. Importantly, such changes would impact refinancings of existing debt, except (arguably) if a refinancing commitment is in place before the FAA change takes effect.

e. Readjustment Amounts – Similar to where FAAs are recalculated (described above), future incurrences may be affected by any Part II rate adjustment that results in a readjustment amount that is impactful under subsection 21(3)1. Unlike for FAA recalculations, the OFHPA does not expressly state that past incurrences and related clean energy adjustments are unaffected by such a readjustment amount. Accordingly, any applicable readjustment amount will affect the funding and related decisions of the FSM going forward and so the FSM will need to adapt and adjust the Financing Plan to address the consequences of such a readjustment amount, including any refinancings of existing debt.

f. Funding Rebates – [CONSIDER RELEVANCE AND IMPACT OF "FUNDING REBATES" ON THE FINANCING PLAN, ONCE THAT CONCEPT IS FLESHED OUT]

5. Negotiating Terms and Conditions

a. Risk Mitigation – The Financing Plan should specifically contemplate appropriate risk mitigation alternatives and the steps to be undertaken by the FSM to assess suitability and feasibility. Among other things, liquidity, funding and hedging instruments should address counterparty creditworthiness assessments, incorporate appropriate early termination events, permit key supplier replacement and portability arrangements and take account of variability of underlying measurements and the related impact on funding.

b. Potential Impact of Episodic Events on Alignment – The Financing Plan should identify possible events that could lead to a significant misalignment and the terms of funding obligations should anticipate terms and conditions capable of avoiding or reducing such misalignment. Examples include market disruption events impacting refinancing alternatives; cross-defaults due to external causes (such as third party defaults) leading to acceleration or an inability to refinance; optionality granted to counterparties that could lead to a significant misalignment on exercise. Such terms should be avoided wherever possible.

c. Avoidance of Balloon Repayment Terms – In settling debt maturities, terms and conditions, the Financing Plan should direct the FSM to avoid terms that could result in a significant portion of outstanding debt obligations becoming due and payable in any single reference period. For example, default and acceleration scenarios should not allow for immediate repayment if the result (as a result of cross default/ cross acceleration provisions, etc.) could be that the ratepayers of a particular reference period would bear a disproportionate obligation for repayment through CEAs. Rather, the amounts payable in such a default and acceleration scenario should be limited so that finance amounts for a reference period are not significantly out of alignment with the FAA amount applicable at the time the funding obligation is incurred (as contemplated by OFHPA 21(3)1).

d. Pricing Considerations – The Financing Plan should specify the basis for evaluating whether agreed upon prices (i.e., interest rates; options; fees and commissions; etc.) are consistent with market terms and conditions. For example, bond pricing based on ratings and having regard to an ample number of market quotations by way of prescribed minimums. If no market exists, pricing should be based on valuation procedures and conventions that do not exaggerate the economic impact of considerations such as illiquidity and thin trading scenarios, strategic behaviour scenarios and conflicts of interest.

e. Consideration of Available Markets – The Financing Plan should direct the FSM (itself or with help from a suitable market intermediary) to thoroughly examine market alternatives for FE debt issuances, hedges, services, etc., and establish parameters to evaluate the depth and availability of each alternative. Non-Canadian markets, as well as non-structured finance market segments within Canada should be considered in light of proposed terms and conditions and suitability, demand and sophistication of each investment segment for products like the proposed FE debt, etc.

f. Subordinated Debt Issuances – The Financing Plan should specify the process by which an efficient level of “subordinated debt” is established, having regard to the entire FE capital structure, and by which the interest rates and other financial terms and parameters for subordinated debt will be established. The process

should involve a purposeful and focused evaluation of the differences between the terms and conditions of senior obligations and subordinated debt in order to ensure that market participants involved in providing prices (including through a dealer poll, if applicable) have a proper understanding of the specific risks associated with the subordinated debt of an FE relative to its senior obligations and the circumstances in which such risks may arise. Measures to address the conflicts of interest inherent in OPG acquiring subordinated debt should be addressed and rigorously observed.

g. Trading Liquidity – The Financing Plan should evaluate the benefits of promoting an active trading market for FE debt obligations (e.g., increased liquidity leading to a robust market for new issuances of FE debt), and take such benefits and any related costs (e.g., prospectus and "public" costs) into account in evaluating prospective market outlets for FE debt.

h. Redemption Rights, Liquidity Facilities and Funding Reserves – The direct and indirect economic costs of redemption and extension privileges and third party standby liquidity arrangements should be fully evaluated. These arrangements may be useful to address primary alignment considerations, but may come at a high cost and so may not achieve the efficiency objectives or be appropriate.

i. Currency and Interest Rate Hedging – The terms and conditions of any options, swaps or other derivatives and related use strategies should provide flexibility to adjust to changing expectations, market circumstances and internal considerations (e.g., variability in cash flows from CEAs). Terminations premiums and acceleration terms leading to potential mismatches or voids should be avoided.

j. Application of Cash Flows – All undertakings by an FE must observe the special purpose and bankruptcy remoteness restrictions applicable in the circumstances. Among other things, all payment obligations should be satisfied from a common "priority of payments waterfall" applicable to the FE under its issuing documentation. Priority of payment entitlements for a counterparty should be consistent with market conventions and negotiated to maximize the efficiency of the FE's capital structure. Cross-collateralization and cross defaults between tranches of debt intended to be serviced by separate investment interests should be avoided.

k. Ratings – [CONSIDER]

l. Incurrence of Expenses – The Financing Plan should establish an approval process that ensures that the costs and expenses incurred for or on behalf of the FE are rigorously scrutinized and negotiated to achieve cost efficiency. Expenses incurred and attendant benefits must be separated from expenses and benefits incurred for OPG on its own behalf.

m. Reliance on Provincial Support Arrangements – The terms and conditions of FE undertakings must take account and enable the step-in rights or termination rights and other optionality contemplated in relation to the Province's protection and assurances arrangements (e.g., see "Optional Replacement" in the current Term Sheet).

n. Arm's Length Considerations – [CONSIDER IF THERE IS A PROCUREMENT POLICY OR OTHER GOVERNMENT CONFLICTS OF INTEREST POLICY THAT SHOULD APPLY. THIS OUTLINE SHOULD PROBABLY SPECIFICALLY ADDRESS THE MANNER OF PRICING SUB DEBT ACQUIRED BY OPG, FSM FEES AND CHARGES, SEPARATENESS OF SERVICES ARRANGEMENTS (FROM OPG'S OWN) AND OBJECTIVE MEASURES TO ASSESS PROPRIETY AND CONFIRM BY PERIODIC AUDIT)]

6. Specific Matters – The OFHPA contemplates or implies that the Financing Plan will be responsive to certain specific matters, including:

   a. Organization of Financing Entities – Subsection 22(2) of the OFHPA contemplates that FEs will be established in accordance with the Financing Plan. Matters for consideration could include:

      i. the basis for setting the capital structure of Financing Entities

      ii. the manner in which Financing Entities will see to achieve and confirm tax neutrality

      iii. special purpose considerations, such as achieving bankruptcy remoteness and consistency with anticipated "sale" treatment (e.g., absence of IESO repurchase obligations)

      iv. relevant accounting considerations.

   b. Transfers of Investment Interests or Portions – Section 30 of the OFHPA contemplates that FEs may transfer all or a portion of an investment interest in an investment interest in accordance with the Financing Plan. Matters for consideration could include:

      i. the protections and considerations anticipated to preserve the internal integrity and functionality of the funding model, including the terms of any co-ownership arrangement and the relative sharing and enforcement of underlying CEAs

      ii. the economic terms and conditions of any such transfer

      iii. tax, accounting and governance considerations associated with the transfer.

   c. Forecast – Regulation para 12(2)2 contemplates that the Financing Plan will include a forecast of funds to be available to the Financing Entity for the purposes of debt repayment (after all other estimated finance amounts for the reference period have been paid in full).

   d. Required Assumptions – Regulation section 14(1) requires that the FSM make reasonable assumptions regarding a number of listed matters in preparing the Financing Plan.

e. Required Content – Regulation subsection 14(2)2 requires that the Financing Plan should address specific items (many of which are the subject of the earlier discussion), including:

   i. the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada

   ii. how recovery amounts will be applied to funding obligations over time

   iii. the capitalization of proposed financing entities,

   iv. strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,

   v. minimizing tax consequences associated with the incurrence of a funding obligation

   vi. articulating the principles by which the Financial Services Manager will make decisions regarding setting interest rates and maturities; refinancings; establishing and using cash reserves; providing indemnities; and agreeing to fees.

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Ken Kandeepan |
| **Cc:** | LAURETA LAPIRA May -TREASURY; LADAK Lubna -TREASURY; WONG Leslie -LAWDIV; Mike Manning |
| **Subject:** | Province Support Agreement |
| **Date:** | Thursday, October 26, 2017 1:06:43 PM |

Ken:

Have you been able to make any progress on releasing the draft support agreement?

As you know Gadi target completion date is the end of October and we have a meeting with the subcommittee of our Board tomorrow.

Please advise

John

**John Lee | Vice President Treasurer |**
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Milligan, Peter |
| **To:** | Ramchandani, Rima; Tobias P. Whitfield (MOF); Hill, Krista; "STEPHEN.ASHBOURNE@blakes.com"; "LEE John - TREASURY"; Feldman, Michael; RYFA Ken -TREASURY |
| **Cc:** | Gavin He; Hosick, Sarah (TBS); Cengarle, John (MOF); John Kim; Anna Strathy; Malle Hanslep (MOF); Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); Mike Manning; Gadi Mayman; Mark Donaldson (MOF); Keley Katona (ENERGY); Tom McKinlay (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron |
| **Subject:** | Provincial Protection Agreement - Dealer Comments |
| **Date:** | Friday, September 15, 2017 12:10:52 PM |

---

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
5. The requirement that the change of law have a "material" adverse effect is not acceptable.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a

provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning; "HAHN PARKER Janet -TREASURY"; "LEE John -TREASURY"; RYFA Ken -TREASURY; Ken Kandeepan; Anna Strathy; WONG Leslie -LAWDIV; John Kim |
| **Cc:** | Martine Bell; Angie Georgakakos; Rasika Yatawara; Eden Amare |
| **Subject:** | Provincial Support Agreement - OPG |

---

Attendees

OFA

Mike Manning
Ken Kandeepan
Ron Kwan
Anna Strathy
John Kim

OPG

John Lee
Ken Ryfa
Les Wong

Contact: Anis Hirani (16) 325-5890

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning; "HAHN PARKER Janet -TREASURY"; "LEE John -TREASURY"; RYFA Ken -TREASURY |
| **Cc:** | Martine Bell |
| **Subject:** | Provincial Support Agreement - OPG |

---

Attendees

OFA

Mike Manning

OPG

John Lee
Ken Ryfa
Les Wong

Contact: Anis Hirani (16) 325-5890

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning; "HAHN PARKER Janet -TREASURY"; "LEE John -TREASURY"; RYFA Ken -TREASURY; Ken Kandeepan; Anna Strathy; WONG Leslie -LAWDIV; John Kim; Ronald Kwan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Martine Bell; Angie Georgakakos; Rasika Yatawara; Eden Amare |
| **Subject:** | Provincial Support Agreement - OPG |

---

Please note change of Boardroom.

Attendees

OFA

Mike Manning
Ken Kandeepan
Ron Kwan
Anna Strathy
John Kim

Legal

Malle Hanslep
Tobias P. Whitfield

OPG

John Lee
Ken Ryfa
Les Wong

Contact: Anis Hirani (16) 325-5890

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy |
| **Cc:** | Ronald Kwan; Gadi Mayman; Mike Manning |
| **Subject:** | REG-11654_ID51067_LRC_CBN-DRAFT-V7.docx |
| **Date:** | Monday, October 16, 2017 11:12:25 AM |
| **Attachments:** | REG-11654_ID51067_LRC_CBN-DRAFT-V7.docx |

---

Hi Ann

As requested, my edits/comments, pretty minimal though.

Thanks

Ken k

**CABINET BRIEFING NOTE**
**AND LRC RECOMMENDATION**

Energy
**Fair Hydro Plan Implementation**

**DRAFT**

**Based on draft materials**

| | | | | |
|---|---|---|---|---|
| Cabinet (info)<br>Feb 15, 2017 | TB/MBC and Cabinet<br>March 1, 2017 | Announcement<br>March 2, 2017 | TB/MBC<br>May 9, 2017 | Cabinet<br>May 10, 2017 |
| Introduction<br>May 11, 2017 | Royal Assent<br>June 1, 2017 | TB/MBC<br>June 27, 2017 | Cabinet (DTC)<br>June 14, 2017 | Cabinet (DTC)<br>June 27, 2017 |
| Program Effective Date<br>July 1, 2017 | TB/MBC<br>September 25, 2017 | Cabinet<br>September 27, 2017 | Cabinet (DTC)<br>October 18, 2017 (TBC) | |

## Summary of Proposal

The proposed regulations are consistent with Cabinet direction.

**Context for Decision:**

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). One component of the OFHP is refinancing a portion of the Global Adjustment (GA). The implementing legislation for GA refinancing, the *Ontario Fair Hydro Plan Act, 2017* (OFHPA), was introduced May 11, 2017 and received Royal Assent on June 1, 2017. The OFHP expands the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) and puts in place mechanisms including appropriate payment settlement and cost-recovery authorities for and through the IESO to manage the deferred GA costs.

On June 14, 2017 new regulations were created under the OFHPA that support calculations related to GA refinancing and one regulation was amended to authorize IESO to borrow to fund the regulatory asset as part of the financing structure. On June 27, 2017 a new regulation was created under the OFHPA that details the roles and responsibilities of the Financial Services Manager (i.e., OPG), IESO and OEB.

**Commented [MK(1]:** Is this the reg that is being amended?

**Proposal:**
This proposal is the next step in the implementation of GA refinancing. The Ministry of Energy (ENERGY) is proposing amendments to O.Reg. 206/17 (i.e., general regulation) under the OFHPA that would:

1. Enable OPG, as Financial Services Manager (FSM) to establish and charge fees, once approved by the OEB, for the services it provides as part of the government's approach to GA refinancing.

2. Enable OPG, as FSM to recover "carrying costs" (i.e., fees and interest amounts) from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021.

**Why does Ontario need these changes? Why now?**

Addressing rising electricity prices is among the highest priorities for Ontarians. The OEB adjusted rates to reflect the OFHP reductions partially on May 1, 2017 and fully on July 1, 2017. The IESO has been managing the GA deferral with its existing resources since reductions have been in place. As such, it is important for the proposed amendments to take effect in a timely manner to enable OPG to go to market to fund the GA deferral by transferring the regulatory asset to the OPG financing entity. ENERGY understands that OPG intends to go to market in November 2017 and is currently in preliminary discussions with rating agencies with respect to timing and other aspects of its FSM role.

**How will this proposal impact Ontario?**

Under the OFHPA, which enables GA refinancing, electricity bills for a typical residential consumer have been reduced by 25 percent effective July 1, 2017, compared to what they would have been without the initiatives included in the OFHP. The OFHPA also provides that further increases to electricity bills for a typical consumer are to be held to the rate of inflation.

The proposed amendments would support the implementation of the OFHP, which affects all specified consumers to whom the "Fair Adjustment" applies. Prescribed consumers include residential consumers, farms, small businesses, condominiums, long-term care homes and co-operative housing. These are primarily consumers eligible for the Regulated Price Plan (RPP), and aligns with the eligibility under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA). ENERGY notes that up to 500,000 small businesses and farms are benefitting from GA refinancing.

**What is the expected cost to government?**

The GA refinancing structure was designed to result in: (1) increase in provincial gross debt (to finance the equity injection in OPG) offset by an equivalent in regulatory assets resulting in no change in net debt, and (2) an increase in interest on debt paid by the province offset by higher earnings from OPG resulting in no impact to the Province's fiscal position~~on annual deficit of the province~~. The proposed regulations would support the implementation of this refinancing structure. According to ENERGY, the proposed amendments would not result in any incremental ~~involve a direct~~ fiscal impact on the finances of the province.

**Commented [TR(2]:** Is TB/MBC approval required?

**Commented [TR(3]:** Are the proposed amendments expected to have any ratepayer impacts, for example through FSM fees? Can estimated impacts be provided?

**Commented [TR(4]:** Can estimated fees range that the FSM could charge be provided?

Allowing OPG to recover carrying costs from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021 is expected to have no net impact to specified consumers within this period. As with other costs under the scheme, these costs would be deferred to future collection from specified consumers on and after May 1, 2021.

**What are the key steps to deliver this proposal?**

The proposed regulations would take effect [NTD: placeholder for timelines].

Commented [TR(5]: Is ENERGY requesting an exemption from the Twice Annual Effective Date?

Amendments would provide further detail on the roles and responsibilities of the OPG, IESO and OEB with respect to GA refinancing. Key steps for the delivery of this proposal include:

- OPG to produce Financing Plans that set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA).
- IESO to record deferral amounts in relation to the establishment of the regulatory asset.
- OPG to begin purchasing monthly regulatory assets from the IESO November 2017 and work with lenders and credit rating agencies in establishing vehicles for securitizing (selling) of investment asset interests.
- OPG management fees and interest costs to be recovered from IESO July 1, 2017 to April 30, 2021.
- OPG management fees and interest costs to be recovered by specified consumers through Clean Energy Adjustments (CEAs) on and after May 1, 2021.
- OEB to review OPG management fees as per the methodology established in regulation and determine the rates that will be applied to specific consumers beginning in 2018/2019.

Commented [TR(6]: Please confirm

**How will the changes be communicated?**

Commented [TR(7]: CO Comms to review

[NTD: CO Comms to provide]

## Notes and Recommendation from LRC

N/A – item proceeding direct to Cabinet.

## Cabinet Office Analysis

The Ministry of Energy's (ENERGY) proposed amendments to O.Reg. 206/17 are consistent with Cabinet direction provided for the implementation of GA refinancing as part of Ontario's Fair Hydro Plan (OFHP) on March 1, 2017. The *Fair Hydro Act, 2017* (OFHPA) establishes the framework to refinance a portion of current Global Adjustment (GA) costs as part of the OFHP. The OFHP reduced a typical residential consumer's electricity bills by 25 percent effective July 1, 2017, compared to what they would have

been without the initiatives under the Plan. The refinancing methodology defers a portion of current GA costs to future ratepayers in order to allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

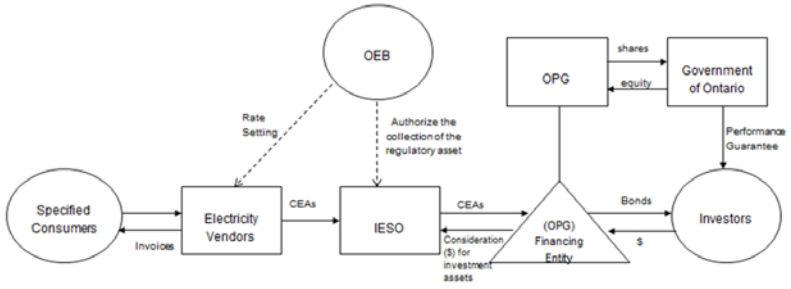
**Refinancing Structure**

Under the GA refinancing structure, the Independent Electricity System Operator (IESO) records the GA cost recovery deferral as a "regulatory asset" (regulated by the Ontario Energy Board (OEB)) to be collected at a future time from "specified consumers" ("the Fair Adjustment" and "IESO deferral"). As a result, specified consumers will receive a reduction in electricity rates from July 1, 2017 to June 30, 2018. IESO may then sell the regulatory asset, at which time it becomes an "investment asset."

The Minister of Energy, following the principles in the Act and regulations, will regularly calculate the "Fair Allocation Amount" to ensure a proper alignment of the allocation of the intergenerational costs and benefits in relation to each of the next 60 six month "reference periods." Based on the Fair Allocation Amount, the Financial Services Manager (OPG), through financing entities, will debt finance a portion of the GA costs. The financings will be backed primarily by the clean energy adjustments payable by specified consumers. The clean energy adjustments will track the actual payment obligations incurred by the financing entities when they become due and payable.

OPG, in its role as the Financial Services Manager (FSM), will calculate the aggregate clean energy adjustment payable in each month of the reference period, and, to ensure intergenerational fairness, these amounts will be managed to ensure consistency with the fair allocation amounts. OEB will calculate the rates at which the clean energy adjustment will be collected from specified consumers.

To recoup the costs associated with the fair adjustment, consumers will be invoiced the clean energy adjustment on their electricity bills through existing IESO and Local Distribution Companies' (LDC) processes, which will be channeled through to pay each financing entity's related funding obligations. The clean energy adjustments will appear on customer's bills once repayment of the accumulated debt begins.



**Note:** CEAs are “clean energy adjustments”.

**Proposal**

In its capacity as FSM under the GA refinancing structure, OPG will take on the risk and responsibility of financing the deferral by purchasing monthly regulatory assets from IESO. OPG will finance these purchases through a combination of an equity investment by the Province and external private sector financing. The proposed regulatory amendments would enable OPG to go to market to fund the GA deferral:

Management Fees: As FSM, OPG is allowed to charge a management fee for its services made up of a base fee, variable fee and Third-party costs (e.g. banking fees). The proposed amendments to O.Reg. 206/17 would establish a methodology for calculating and reviewing FSM management fees. OPG’s base fee for 2017/18 would be established at 7.5 basis points. The OEB would be responsible for determining FSM management fees for future years by reviewing fees for comparable services through the use of an outside expert..

Carrying Costs: OPG must recover management fees and interest costs (i.e., “Carrying Costs”) beginning July 1, 2017 to ensure the implementation of GA refinancing satisfies accounting requirements. These costs however, cannot be recovered from specified consumers during the “inflationary cap period” from July 1, 2017 to April 30, 2021 in order for GA refinancing to proceed as planned under the OFHPA without incurring significantly increased costs. The proposed amendments to O.Reg. 206/17 would enable the recovery of these costs by OPG from the IESO during this period. These costs would form part of the variance account for future collection from specified consumers and would be recovered through the CEAs on and after May 1, 2021.

**Stakeholder response:**

ENERGY consulted with representatives from the OEB, IESO an OPG, as well as external advisors (i.e., lawyers and accountants) and other ministries as appropriate on the proposed regulatory amendments. Consistent with the approach taken to develop and implement the OFHPA, a steering committee chaired by ENERGY’s Deputy Minister met bi-weekly on the status of the proposed regulatory amendments. The committee consists of senior executives from ENERGY, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, Ontario Financing Authority, OPCD, OPG, OEB and IESO.

General public (Neutral) – Generally supports the GA refinancing initiative, but also question the longer term implications. Some individuals and organizations perceive the GA smoothing as unduly burdening future generations.

OPG-

OEB-

**Commented [KK8]:** The base fee is explained, perhaps there should be an explanation of the variable fee as well.

**Commented [TR(9]:** Please confirm and provide rationale for this fee structure

**Commented [KK10]:** My understanding was that only the base fee will be reviewed by the OEB.

**Commented [TR(11]:** Would the OEB also have a role in determining fees beyond the base fee? Would fees be determined through the OEB’s hearing process?

**Commented [TR(12]:** Please confirm

**Commented [TR(13]:** Please confirm

**Commented [TR(14]:** Please confirm total expected amount for costs during this period, $500k-1M?

**Commented [TR(15]:** What is OPG’s view on the proposed amendments?

**Commented [TR(16]:** What is the OEB’s view on the proposed amendments?

IESO-

**Risks:**

OPG/SPV Mechanism

There are several risks associated with the OPG/SPV mechanism that remain. OPG/SPV could continue to be criticised for not having an appropriate level of accountability to the government or the public, due to the limited amount of government control of the entity, and future rate increases. However, this is seen by the markets as an essential component for the structure to operate and the government remains the sole shareholder of OPG.

Proposed regulations build on a complex financing structure that is unique to Canada—uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise has been required to get to this point. External private sector ~~F~~financing is still not certain.

Legal

In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

**Linkages:**

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in October / November 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP is intended to balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity Consumers Act, 2016*, (ORECA) put in place a rebate for an amount equivalent to the 8% provincial portion of the HST for eligible residential, small business customers and farms, beginning January 1, 2017.

Rural and Remote Rate Protection (RRRP) and Delivery Rate Protection (DRP) – RRRP and DRP help to offset the higher costs to distribute electricity to Ontario

**Commented [TR(17]:** What is the IESO's view on the proposed amendments?

**Commented [TR(18]:** Are there any risks associated with the proposed management fees, for example rate impact or perception?

**Commented [TR(19]:** Are there any accounting risks associated with the proposed amendments?

**Commented [TR(20]:** Are the amendments expected to have an impact on the financeability/saleability of the investment asset?

**Commented [TR(21]:** Do the proposed amendments introduce any new risks with respect to the OPG/SPV mechanism?

**Commented [TR(22]:** Does the role of the OEB in overseeing OPG fees take into account the risk that OPG could make the case to be exempted from compensation rules because there is no national comparator for this aspect of their work?

DRAFT

residents who live in rural or remote locations all across the Province. DRP was established under the FHA and regulations approved June 14, 2017. Both the expanded RRRP and DRP were implemented July 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users, which was earlier than previously estimated. For all other consumers the DRC will be removed by April 2018, also earlier than previously estimated.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. As part of OFHP, ICI eligibility has been expanded several times, and was most recently expanded to allow for the participation of the manufacturing and, e.g., greenhouse sectors with an average month peak demand greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI provides a benefit to all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to $2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

**Other Jurisdictions:**
According to ENERGY, no other jurisdictions have comparable legislative and regulatory frameworks. The U.S. does have examples of securitizations involving single distribution companies, but none of the transactions would have approached the level of complexity involved with the present OFHPA initiative.

**Terms you need to know**
- **Global Adjustment (GA) –** The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and

demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

- **Local Distribution Companies (LDCs) –** Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.) LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive OEB approval to charge a distribution rate.
- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Ontario Power Generation (OPG) –** A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Independent Electricity System Operator (IESO) –** An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.

DRAFT

**From:** Ken Kandeepan
**To:** Malle Hanslep (MOF)
**Cc:** Anna Strathy; Tobias P. Whitfield (MOF); Mike Manning; Mark Donaldson (MOF)
**Subject:** RE: 10 am meeting
**Date:** Thursday, November 02, 2017 10:03:20 AM

---

Malle

Since Mark has to leave at 2PM I suggest that we first take up the Process document given that this will be of more interest to E&Y in signing off on the proposed accounting treatment.

Thanks

Ken k

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 02, 2017 8:28 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Re: 10 am meeting

Yes that sounds good

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ken Kandeepan
Sent: Thursday, November 2, 2017 08:22
To: Hanslep, Malle (MOF)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA)
Subject: RE: 10 am meeting

Since we have arranged for lunch how about 12 to 3 PM

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 02, 2017 8:20 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: 10 am meeting

We are receiving a second draft between 9 and 10. Can we push the meeting to a later time today to allow you time to review before the meeting. I am available all day. Maybe at 1 pm

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan |
| **Cc:** | Anna Strathy; Tobias P. Whitfield (MOF); Mike Manning; Mark Donaldson (MOF) |
| **Subject:** | RE: 10 am meeting |
| **Date:** | Thursday, November 02, 2017 10:10:59 AM |

---

Yes.

-----Original Message-----
From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: November 2, 2017 10:03 AM
To: Hanslep, Malle (MOF)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Donaldson, Mark (TBS)
Subject: RE: 10 am meeting

Malle

Since Mark has to leave at 2PM I suggest that we first take up the Process document given that this will be of more interest to E&Y in signing off on the proposed accounting treatment.

Thanks

Ken k

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 02, 2017 8:28 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Re: 10 am meeting

Yes that sounds good

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ken Kandeepan
Sent: Thursday, November 2, 2017 08:22
To: Hanslep, Malle (MOF)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA)
Subject: RE: 10 am meeting

Since we have arranged for lunch how about 12 to 3 PM

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 02, 2017 8:20 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: 10 am meeting

We are receiving a second draft between 9 and 10. Can we push the meeting to a later time today to allow you time to review before the meeting. I am available all day. Maybe at 1 pm

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan; Carlos Yep; Mike Manning; James Devine |
| **Subject:** | RE: 2017 09 11 OFHP Outstanding Business Issues v02.pptx |
| **Date:** | Friday, September 15, 2017 3:35:14 PM |
| **Attachments:** | 2017 09 11 OFHP Outstanding Business Issues v02 Markup.pptx |

Updated it a bit more….if no other comments, I will send back near eod.
John

**From:** Ken Kandeepan
**Sent:** Friday, September 15, 2017 1:49 PM
**To:** Carlos Yep ; Mike Manning ; James Devine
**Cc:** John Kim
**Subject:** 2017 09 11 OFHP Outstanding Business Issues v02.pptx

Hi
I have few minor edits/comments. You may want to take a quick look slide #5 re the methodology for establishing the interest rates on the sub debt. Since John is coordinating you can provide comments to him.
Thanks
Ken K

# OFHP Business Issues

DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - The Financing Entity will purchase the regulatory asset, effectively financing the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including:
  - A regulation to minimize Payments in Lieu (PILs) of taxes by the financing entity
  - An equity injection by the Province to OPG that OPG would use to lend to the financing entity
  - A subordinated debt agreement related to OPG lending to the financing entity

The above are in addition to a "Change of Law Protection Agreement" under which the Province would provide a guarantee to support the financing entities' debt under certain limited events such as a change in law or adverse court decision that would materially adversely affect the financing entities' ability to service debt.

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as financial services manager, will be a Trust
- The Trust would be subject to tax under the Income Tax Act (Canada) (ITA) and the Ontario Taxation Act, 2007 (TA)
- The beneficiary of the Trust will be a corporation that will be directly or indirectly wholly-owned by OPG
  - The corporation, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down its debt and other liabilities – OEFC is the legal continuation ~~the stranded debt~~ of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the ministry ~~Province~~ plans to bring forward a proposed Minister of Finance's regulation under the *Electricity Act* that would exempt the financing entity trust ~~corporation~~ from paying PILs
- The ministry ~~Province~~ will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financing Entity

**Next Steps:**

- Draft letter from the Minister of Finance to OPG in development that will provide comfort that the financing entity will be exempt from PILs
- The Ministry of Finance is working with OPG on a draft regulation, which will be brought forward in the Fall

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval through the PRRT process for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a monthly/quarterly basis, OPG will send a notice of share subscription to the ~~Province~~ Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds following receipt of a certificate from the Ministry of Energy, as required under s.11.4 of the Financial Administration Act

**Next Steps:**

- OPG is seeking its Board approval on September 29th for …
- The Province is working with appropriate parties internally to ensure a mechanism is in place to provide the equity injection to OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt
- Interest rates on the subordinated debt will be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying ~~Government of~~ Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate.

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September

| | |
|---|---|
| **From:** | Carlos Yep |
| **To:** | Ronald Kwan; Ken Kandeepan; John Kim |
| **Cc:** | Mike Manning; James Devine; John Psinas |
| **Subject:** | RE: 2017 09 29 OFHP Business Issues v01.pptx |
| **Date:** | Tuesday, October 03, 2017 10:49:37 AM |
| **Attachments:** | 2017 09 29 OFHP Business Issues v02cy_Markup.pptx |

---

John

I have made some edits to the Base Fee and Variable Fee on slide#7. It now reads as follows:

- **Base fee**: Monthly fee calculated as 7.5 basis points on monthly funding obligation. The base fee will be independently reviewed in 2018.
- **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches. The variable fee in any one year will be no more than 5 basis points of the net annual borrowing and can be no less than -5 basis of the net annual borrowing. If the variable fee is a negative amount, such amount will be deducted from the base fee in the following calendar year in twelve equal monthly payments

Regards

Carlos

---

**From:** Ronald Kwan

**Sent:** Monday, October 02, 2017 1:18 AM

**To:** Ken Kandeepan ; John Kim

**Cc:** Mike Manning ; James Devine ; Carlos Yep ; John Psinas

**Subject:** RE: 2017 09 29 OFHP Business Issues v01.pptx

And some comments / suggested edits from me. John may have additional ones.

Ron

---

**From:** Ken Kandeepan

**Sent:** October-01-17 1:04 PM

**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>

**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>

**Subject:** 2017 09 29 OFHP Business Issues v01.pptx

Pls see my comments, Carlos/Jim you may also want to add to mine.

Thanks

Ken k

# OFHP Business Issues

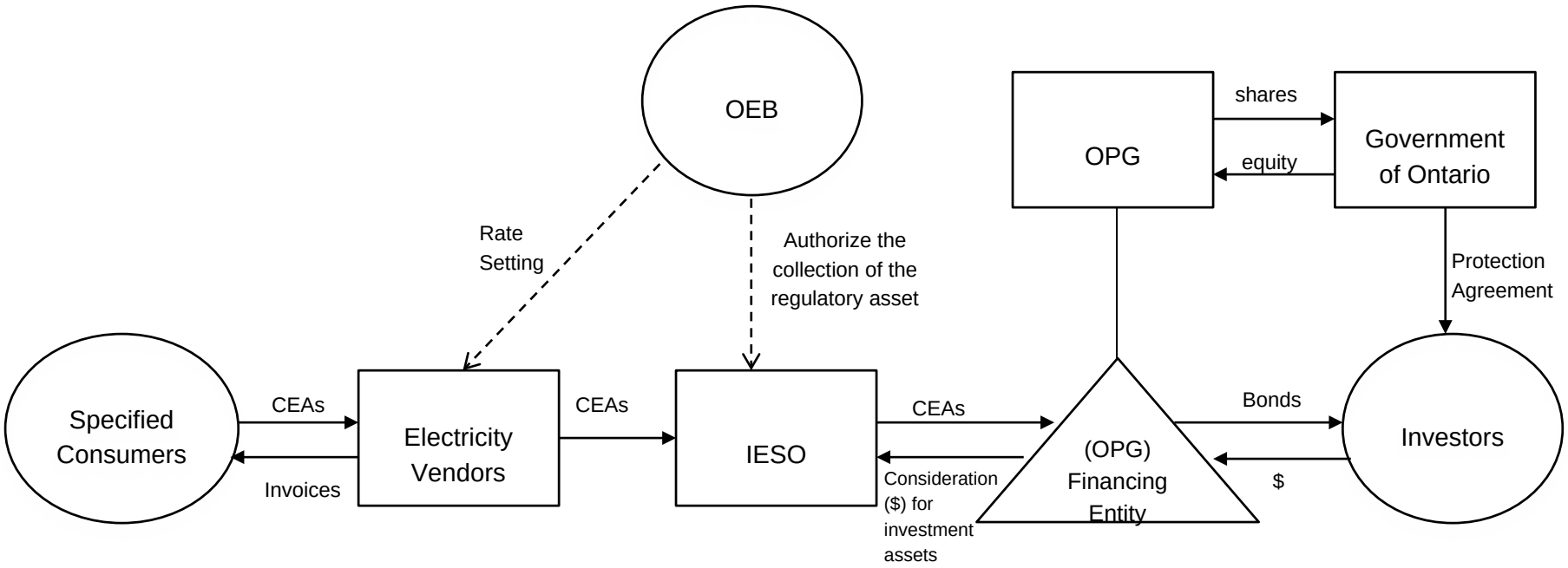
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - ~~The~~ A financing entity ~~will~~ purchas~~ing~~ ~~e~~ the regulatory asset would~~,~~ effectively finance ~~ing~~ the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
    - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Province has agreed to provide a protection agreement that supports the Financing Entity and prospective debt holders such that~~, under certain circumstances,~~ the Province would take over the funding obligations of the Financing Entity, under certain circumstances, including
    - Actions of the Legislative Assembly that undermine the financing arrangement~~,~~; i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
    - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
    - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
    - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access the U.S. market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
    - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
    - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its ~~accounting~~ objectives of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 7.5 basis points on monthly funding obligation. The base fee will be independently reviewed in 2018.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches. The variable fee in any one year will be no more than 5 basis points of the net annual borrowing and can be no less than -5 basis of the net annual borrowing. If the variable fee is a negative amount, such amount will be deducted from the base fee in the following calendar year in twelve equal monthly payments
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust)
- The Trust would be subject to tax under the Income Tax Act (Canada) and the Ontario Taxation Act, 2007
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG
  - Subco, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down its debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the Ministry of Finance plans to bring forward a proposed Minister of Finance's regulation under the *Electricity Act* , 1998 that would exempt Subco from paying PILs on income received as beneficiary of the Trust
- The Ministry of Finance will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financial Services Manager

**Next Steps:**

- Draft letter from the Minister of Finance to OPG is in development that will provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which will be brought forward in the Fall

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Ken Kandeepan; John Kim |
| **Cc:** | Mike Manning; James Devine; Carlos Yep; John Psinas |
| **Subject:** | RE: 2017 09 29 OFHP Business Issues v01.pptx |
| **Date:** | Monday, October 02, 2017 7:30:25 AM |
| **Attachments:** | 2017 09 29 OFHP Business Issues v01_Markup.pptx |

---

And some comments / suggested edits from me. John may have additional ones.

Ron

---

**From:** Ken Kandeepan

**Sent:** October-01-17 1:04 PM

**To:** Carlos Yep ; James Devine

**Cc:** Mike Manning ; Ronald Kwan ; John Kim ; John Psinas

**Subject:** 2017 09 29 OFHP Business Issues v01.pptx

Pls see my comments, Carlos/Jim you may also want to add to mine.

Thanks

Ken k

# OFHP Business Issues

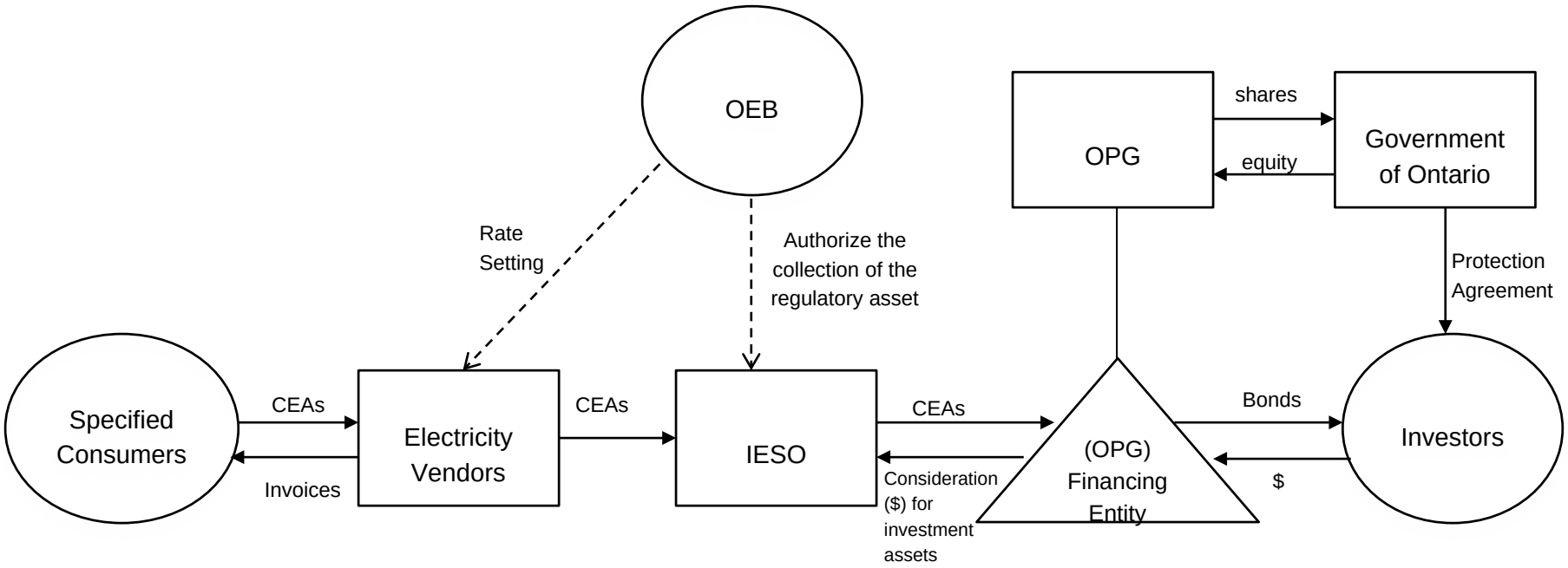
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - ~~The~~ A financing entity ~~will~~ purchas~~ing~~ ~~e~~ the regulatory asset would~~,~~ effectively finance ~~ing~~ the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
    - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Province has agreed to provide a protection agreement that supports the Financing Entity and prospective debt holders such that~~, under certain circumstances,~~ the Province would take over the funding obligations of the Financing Entity, under certain circumstances, including
    - Actions of the Legislative Assembly that undermine the financing arrangement~~,~~; i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
    - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
    - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
    - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access the U.S. market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
    - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
    - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its ~~accounting~~ objectives of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 10 basis points on monthly funding obligation when the annual funding obligation is less than $10B, and 8 basis points on the monthly funding obligation when the annual funding obligation is greater than $10B.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust)
- The Trust would be subject to tax under the Income Tax Act (Canada) and the Ontario Taxation Act, 2007
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG
  - Subco, given it is owned by OPG, would be exempt from federal and provincial corporate taxes and property taxes payable by private sector companies, and instead make payments in lieu of taxes (PILs) to the Ontario Electricity Financial Corporation (OEFC)
  - PILs are used by the OEFC to help pay down its debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro
- In order to mitigate the cost to ratepayers, the Ministry of Finance plans to bring forward a proposed Minister of Finance's regulation under the *Electricity Act* , 1998 that would exempt Subco from paying PILs on income received as beneficiary of the Trust
- The Ministry of Finance will also consider similar regulations in the future should OPG establish another financing entity in its role as the Financial Services Manager

**Next Steps:**

- Draft letter from the Minister of Finance to OPG is in development that will provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which will be brought forward in the Fall

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Carlos Yep; Ronald Kwan; Ken Kandeepan |
| **Cc:** | Mike Manning; James Devine; John Psinas |
| **Subject:** | RE: 2017 09 29 OFHP Business Issues v01.pptx |
| **Date:** | Tuesday, October 03, 2017 12:59:39 PM |

Hi Carlos,

You're still OK with [TBD]'s on slide 10?

John

---

**From:** Carlos Yep

**Sent:** Tuesday, October 03, 2017 10:50 AM

**To:** Ronald Kwan ; Ken Kandeepan ; John Kim

**Cc:** Mike Manning ; James Devine ; John Psinas

**Subject:** RE: 2017 09 29 OFHP Business Issues v01.pptx

John

I have made some edits to the Base Fee and Variable Fee on slide#7. It now reads as follows:

- **Base fee**: Monthly fee calculated as 7.5 basis points on monthly funding obligation. The base fee will be independently reviewed in 2018.
- **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches. The variable fee in any one year will be no more than 5 basis points of the net annual borrowing and can be no less than -5 basis of the net annual borrowing. If the variable fee is a negative amount, such amount will be deducted from the base fee in the following calendar year in twelve equal monthly payments

Regards

Carlos

---

**From:** Ronald Kwan

**Sent:** Monday, October 02, 2017 1:18 AM

**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>

**Subject:** RE: 2017 09 29 OFHP Business Issues v01.pptx

And some comments / suggested edits from me. John may have additional ones.

Ron

---

**From:** Ken Kandeepan

**Sent:** October-01-17 1:04 PM

**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>

**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>

**Subject:** 2017 09 29 OFHP Business Issues v01.pptx

Pls see my comments, Carlos/Jim you may also want to add to mine.

Thanks

Ken k

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN |
| **Cc:** | McKinlay, Tom (ENERGY); Tobias P. Whitfield (MOF); Mike Manning; Ken Kandeepan; Ronald Kwan |
| **Subject:** | RE: Call this morning |
| **Date:** | Friday, November 17, 2017 11:46:11 AM |

---

So it looks like 12:15pm for a pre-call with Energy and 12:30pm for the broader call.
Malle or Stephen, could you please let me know who to include from OPG/Torys?
Thanks, Anna

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 11:32 AM
**To:** Thouin, Alena (ENERGY) ; ASHBOURNE, STEPHEN
**Cc:** McKinlay, Tom (ENERGY) ; Tobias P. Whitfield (MOF) ; Anna Strathy
**Subject:** RE: Call this morning

Hi Alena,
We had a call right now and based on that the plan is to have a call with OPG and Torys' to discuss this issue and it will be important to have Energy staff on the call too. Anna is going to connect with Energy Policy (Steen Hume's group) and I am following up with you here. Before that further call, it will also be important to have a pre-call to discuss the issues to ensure that everyone is in the loop.
OFA staff are checking with OPG on the possible timing of that call so as to plan the timing of these calls today.
Thanks.
Malle

**From:** Thouin, Alena (ENERGY)
**Sent:** November 17, 2017 11:00 AM
**To:** ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Cc:** McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

I am in other briefings right now, but I will follow up with you Steve/Malle.

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:56 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com | Twitter | Unsubscribe**

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** ASHBOURNE, STEPHEN
**Sent:** Friday, November 17, 2017 10:50 AM
**To:** 'Hanslep, Malle (MOF)'
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

Malle, I can talk at 11 if that still works for others. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues. Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Anna Strathy
**To:** Ken Kandeepan
**Cc:** Ronald Kwan; Mike Manning
**Subject:** RE: Call this morning
**Date:** Friday, November 17, 2017 11:31:14 AM

---

Hi Ken, good suggestion. We are going to be having further calls (one pre-call with Energy and a larger call with OPG and Torys) that perhaps OPCD could join. Could you check in with Cindy on her availability?
Anna

**From:** Ken Kandeepan
**Sent:** Friday, November 17, 2017 11:21 AM
**To:** Anna Strathy
**Cc:** Ronald Kwan ; Mike Manning
**Subject:** Re: Call this morning
Anna
I guess it's too late but be useful to have included Cindy/Mark
Thanks
Ken k

On Nov 17, 2017, at 11:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> For 11am
>
> **From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
> **Sent:** Friday, November 17, 2017 10:56 AM
> **To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Cc:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: Call this morning
> In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com
> Dir: 416-863-3086
>
> **Blake, Cassels & Graydon LLP**
> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
> Tel: 416-863-2400 Fax: 416-863-2653
> **blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
> **Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
> This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
> L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.
>
> **From:** ASHBOURNE, STEPHEN
> **Sent:** Friday, November 17, 2017 10:50 AM
> **To:** 'Hanslep, Malle (MOF)'
> **Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF);

Strathy, Anna (OFA)
**Subject:** RE: Call this morning
Malle, I can talk at 11 if that still works for others. Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues. Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

<23239360-v14-CLPA - Protection Agreement.DOCX>

<23239360-vpdf-CLPA - Protection Agreement.PDF>

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Mike Manning; Ken Kandeepan; Ronald Kwan |
| **Cc:** | Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Call this morning |
| **Date:** | Friday, November 17, 2017 11:00:01 AM |

---

I will momentarily. Adding Ron Kwan as well. Ron, are you available at 11am?

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Friday, November 17, 2017 10:56 AM

**To:** Mike Manning ; Ken Kandeepan ; Anna Strathy

**Cc:** Tobias P. Whitfield (MOF) ; ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) ; Thouin, Alena (ENERGY)

**Subject:** RE: Call this morning

I don't know whether any others should be on this call too right now but I think that this would be the main group for now.
Anna: would you please circulate a dial in? Thanks.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** November 17, 2017 10:54 AM
**To:** Hanslep, Malle (MOF); Kandeepan, Ken (OFA); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

11:00 works for me.

Is there a call-in number?

Thanks, Mike

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Friday, November 17, 2017 10:52 AM

**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

**Subject:** FW: Call this morning

Hi,
Steve is available at 11 if you would like to discuss this point.
Thanks
Malle

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:50 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning
Malle, I can talk at 11 if that still works for others. Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653

**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues. Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Ken Kandeepan; Anna Strathy |
| **Cc:** | Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Call this morning |
| **Date:** | Friday, November 17, 2017 10:56:05 AM |

I don't know whether any others should be on this call too right now but I think that this would be the main group for now.
Anna: would you please circulate a dial in? Thanks.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** November 17, 2017 10:54 AM
**To:** Hanslep, Malle (MOF); Kandeepan, Ken (OFA); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

11:00 works for me.
Is there a call-in number?
Thanks, Mike

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 10:52 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: Call this morning

Hi,
Steve is available at 11 if you would like to discuss this point.
Thanks
Malle

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:50 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

Malle, I can talk at 11 if that still works for others. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

Blakes
**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.

Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Malle Hanslep (MOF); Ken Kandeepan; Anna Strathy
**Subject:** RE: Call this morning
**Date:** Friday, November 17, 2017 10:53:53 AM

---

11:00 works for me.
Is there a call-in number?

Thanks, Mike

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 10:52 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: Call this morning

Hi,

Steve is available at 11 if you would like to discuss this point.

Thanks

Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:50 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

Malle, I can talk at 11 if that still works for others. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the

telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.

Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN |
| **Cc:** | McKinlay, Tom (ENERGY); Tobias P. Whitfield (MOF); Mike Manning; Ken Kandeepan; Ronald Kwan |
| **Subject:** | RE: Call this morning |
| **Date:** | Friday, November 17, 2017 11:48:41 AM |

Hi,
Most likely from OPG – John Lee and Leslie Wong from OPG
From Torys – Rima Ramchandani and Nina Mansoori

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 17, 2017 11:46 AM
**To:** Hanslep, Malle (MOF); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN
**Cc:** McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA)
**Subject:** RE: Call this morning

So it looks like 12:15pm for a pre-call with Energy and 12:30pm for the broader call.
Malle or Stephen, could you please let me know who to include from OPG/Torys?
Thanks, Anna

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 11:32 AM
**To:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Call this morning

Hi Alena,
We had a call right now and based on that the plan is to have a call with OPG and Torys' to discuss this issue and it will be important to have Energy staff on the call too. Anna is going to connect with Energy Policy (Steen Hume's group) and I am following up with you here.
Before that further call, it will also be important to have a pre-call to discuss the issues to ensure that everyone is in the loop.
OFA staff are checking with OPG on the possible timing of that call so as to plan the timing of these calls today.
Thanks.
Malle

**From:** Thouin, Alena (ENERGY)
**Sent:** November 17, 2017 11:00 AM
**To:** ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Cc:** McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

I am in other briefings right now, but I will follow up with you Steve/Malle.

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 17, 2017 10:56 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)

**Subject:** RE: Call this morning

In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** ASHBOURNE, STEPHEN
**Sent:** Friday, November 17, 2017 10:50 AM
**To:** 'Hanslep, Malle (MOF)'
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** RE: Call this morning

Malle, I can talk at 11 if that still works for others. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.

Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle

Malle Hanslep
Deputy Director

Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ramchandani, Rima; ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 4:04:03 PM |

Thanks Rima. Appreciate it.

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** November 16, 2017 3:52 PM
**To:** Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, this point isn't holding us up. We are working on the revised drafts and will send them to you as soon as they are available. Thanks,

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:43 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Rima,

Our understanding was that this change would be made in the Trust Indenture, not in the Protection Agreement. It appears that there may be some issues and technicalities about this which need to be discussed further to see if this is a viable and feasible option. However, in the interests of time, can all the other changes be made and reflected into the drafts so that we have revised drafts to look at and we can work on this issue separately as I don't think it affects the other points in the agreements – it really goes only to s. 4.02(b) as it relates to amendments. I think all the other comments can be reflected into revised drafts.

Thank you

Malle

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** November 16, 2017 3:31 PM
**To:** Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF); Ramchandani, Rima
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to

receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.

If there is a miscommunication on this point, it would probably be most efficient if you arranged a joint call with John, Mike and Ken.

Thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:10 PM
**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.

Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying

agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.
Feel free to call if a discussion on this would be useful.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,
Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?
Thanks,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP [torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ramchandani, Rima |
| **To:** | Malle Hanslep (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 3:52:27 PM |

Hi Malle, this point isn't holding us up. We are working on the revised drafts and will send them to you as soon as they are available. Thanks,

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:43 PM
**To:** Ramchandani, Rima ; ASHBOURNE, STEPHEN ; Mansoori, Nina
**Cc:** LEE John -TREASURY ; WONG Leslie -LAWDIV ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kandeepan, Ken (OFA) ; Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Rima,

Our understanding was that this change would be made in the Trust Indenture, not in the Protection Agreement. It appears that there may be some issues and technicalities about this which need to be discussed further to see if this is a viable and feasible option. However, in the interests of time, can all the other changes be made and reflected into the drafts so that we have revised drafts to look at and we can work on this issue separately as I don't think it affects the other points in the agreements – it really goes only to s. 4.02(b) as it relates to amendments. I think all the other comments can be reflected into revised drafts.

Thank you

Malle

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** November 16, 2017 3:31 PM
**To:** Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF); Ramchandani, Rima
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.

If there is a miscommunication on this point, it would probably be most efficient if you

arranged a joint call with John, Mike and Ken.
Thanks,
Rima
Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:10 PM
**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.
Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi Nina,
Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.
Feel free to call if a discussion on this would be useful.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com

Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ramchandani, Rima; ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 3:43:24 PM |

Hi Rima,
Our understanding was that this change would be made in the Trust Indenture, not in the Protection Agreement. It appears that there may be some issues and technicalities about this which need to be discussed further to see if this is a viable and feasible option. However, in the interests of time, can all the other changes be made and reflected into the drafts so that we have revised drafts to look at and we can work on this issue separately as I don't think it affects the other points in the agreements – it really goes only to s. 4.02(b) as it relates to amendments. I think all the other comments can be reflected into revised drafts.
Thank you
Malle

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** November 16, 2017 3:31 PM
**To:** Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF); Ramchandani, Rima
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.
If there is a miscommunication on this point, it would probably be most efficient if you arranged a joint call with John, Mike and Ken.
Thanks,
Rima
Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:10 PM
**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>;

Ramchandani, Rima <rramchandani@torys.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.
Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi Nina,
Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.
Feel free to call if a discussion on this would be useful.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently

delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ramchandani, Rima |
| **To:** | Malle Hanslep (MOF); ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF); Ramchandani, Rima |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 3:31:20 PM |

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.
If there is a miscommunication on this point, it would probably be most efficient if you arranged a joint call with John, Mike and Ken.
Thanks,
Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:10 PM
**To:** ASHBOURNE, STEPHEN ; Mansoori, Nina
**Cc:** LEE John -TREASURY ; WONG Leslie -LAWDIV ; Ramchandani, Rima ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kandeepan, Ken (OFA) ; Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.
Malle

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi Nina,
Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture

will specifically designate the Protection Provider as a Specified Creditor.

3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.

Feel free to call if a discussion on this would be useful.

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this

point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 3:09:52 PM |

Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.
Malle

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro
Hi Nina,
Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.
Feel free to call if a discussion on this would be useful.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

Blakes

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | ASHBOURNE, STEPHEN; Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY); Steen Hume (CAB) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 2:53:55 PM |

Hi all,

Following up on our meeting and Steve's email below, when can the Province expect to receive revised versions of the Protection Agreement and Process Agreement for review? We understood that you would be doing a revision reflecting the comments from the meeting yesterday and also incorporate below the description of the proposal described in Steve's email which includes incorporating the changes into the Master Trust Indenture. As we know the timelines are very tight.

Thanks.

Malle

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

**Sent:** November 16, 2017 2:01 PM

**To:** Mansoori, Nina

**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)

**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due

to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.
Feel free to call if a discussion on this would be useful.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Mike Manning; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 2:01:01 PM |

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.

Feel free to call if a discussion on this would be useful.

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Ramchandani, Rima; Malle Hanslep (MOF); Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; WONG Leslie -LAWDIV; Mike Manning; Gadi Mayman; Ken Kandeepan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Change of Law Protection Agreement - Fair Hydro |
| **Date:** | Thursday, November 16, 2017 4:07:34 PM |

Noteholders do not get notice of amendments under your Trust Indenture.
"Specified Creditors" are defined to include the Indenture Trustee. The notices we are most concerned about are the Issuer Certificates, Ordinary Resolutions and other notices contemplated to be delivered to the Indenture Trustee under 11.01 and 11.02. Please confirm that is what you are proposing be delivered to the Province.
Regarding other Program Agreements, there is no notice requirement in favour of Noteholders, the Indenture Trustee or other Specified Creditors. What is your proposal for those situations?
The impact of an amendment on the Province is not aligned with the impact on Noteholders. The Province needs itself to be treated as a "Specified Creditor" in order to make the amending thresholds operate properly in relation to the Province under the Trust Indenture.
As mentioned, a covenant from the Indenture Trustee is not reliable given their passive role, and it is doubtful a trust company would ever take on a standalone obligation of that sort in any event.
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** Thursday, November 16, 2017 3:31 PM
**To:** 'Hanslep, Malle (MOF)'; ASHBOURNE, STEPHEN; Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF); Ramchandani, Rima
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.
If there is a miscommunication on this point, it would probably be most efficient if you arranged a joint call with John, Mike and Ken.
Thanks,
Rima
Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-16-17 3:10 PM

**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.
Malle

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 16, 2017 2:01 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** RE: Change of Law Protection Agreement - Fair Hydro

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
    - Section 4.02 will remain unchanged in relation to incurrences
    - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
    - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.

Feel free to call if a discussion on this would be useful.

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 1:36 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
**Subject:** Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Gadi Mayman; Mike Manning; Ronald Kwan; Veinot, Cindy (TBS); Mark Donaldson (MOF); Scott Nelms (ENERGY); Keley Katona (ENERGY); John Kim; Steen Hume (CAB); Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 9:35:19 AM |

Thanks Malle, great clarification, will await the results of your call.
Ken k

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:34 AM
**To:** Ken Kandeepan
**Cc:** Gadi Mayman ; Mike Manning ; Ronald Kwan ; Veinot, Cindy (TBS) ; Mark Donaldson (MOF) ; Scott Nelms (ENERGY) ; Keley Katona (ENERGY) ; John Kim ; Steen Hume (CAB) ; Tobias P. Whitfield (MOF) ; Thouin, Alena (ENERGY)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Ken,
Yes this is one of the issues, i.e. where the obligation to provide notice and information to the province would be found. However, we reviewed the master trust indenture further last night. There are some other issues as well as under the trust indenture s. 11.01 the Issuer and the Indenture Trustee have the ability to make a number of types of amendments without the consent of specified creditors including to add to the covenants of the Issuer or to surrender any right or power conferred upon the Issuer for the benefit of debtholders and also to enable the Issuer to file a registration statement for the offering of securities in the U.S. etc.. S. 11.02 provides for the making of a range of amendments with consent of debtholders. This is why Blakes specified these sections in their email to Torys as not all amendments are sent to the specified creditors. I think it would be worthwhile to have a further internal call with Blakes later this morning so that we have a full understanding of the implications of this issue.
If the Province is paying under the limited guarantee in the protection agreement, the Province would be paying in accordance with the terms and conditions of the agreements and obligations that the financing entity has entered into. If the Province determines that it is appropriate to directly assume the debt and obligations and obtains authority and approvals to do so and elects its option to do so, then upon direct assumption of the debt and derivatives, there would an opportunity for the terms be varied to be under the Province's ISDA's.
Thanks,
Malle

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** November 17, 2017 8:49 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Veinot, Cindy (TBS); Donaldson, Mark (TBS); Nelms, Scott (MOF); Katona, Keley (MOF); Kim, John (OFA); Hume, Steen (ENERGY)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Malle
As per our discussion last evening, I understood that the compromise position re the amendments issue was for the Province to be designated as a "specified creditor" thus be informed of any amendments 10 business days prior. The sticking point, as I understand it was our preference that these requirements be part of the Indenture Trust agreement while Tory's/Osler suggested that it be

part of the Protection Agreement.
So the question is if we accept the Tory's/Osler position does the Province's risk increase materially, if not then we can proceed with their suggestion, especially since the Trustee is a party to the Protection Agreement.
I don't believe there any accounting implication from either approach though leave that to Cindy and Mark.
Steve also raises the issue of other Program Agreements presumably referring to agreements for derivatives. I am not too fussed about these, since any derivative arrangement that we will be taking on if the Protection Agreement comes into force will be under our ISDA. Maybe Mike may have something to add to this.
Thanks
Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Thursday, November 16, 2017 8:37 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement
Hopefully I have captured everyone who is usually copied on these.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** November-16-17 8:29 PM
**To:** 'ASHBOURNE, STEPHEN'; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John - TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow. Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca;

Alena.Thouin@ontario.ca

**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com [osler.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents

joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ken Kandeepan |
| **Cc:** | Gadi Mayman; Mike Manning; Ronald Kwan; Veinot, Cindy (TBS); Mark Donaldson (MOF); Scott Nelms (ENERGY); Keley Katona (ENERGY); John Kim; Steen Hume (CAB); Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 9:33:52 AM |

Hi Ken,
Yes this is one of the issues, i.e. where the obligation to provide notice and information to the province would be found. However, we reviewed the master trust indenture further last night. There are some other issues as well as under the trust indenture s. 11.01 the Issuer and the Indenture Trustee have the ability to make a number of types of amendments without the consent of specified creditors including to add to the covenants of the Issuer or to surrender any right or power conferred upon the Issuer for the benefit of debtholders and also to enable the Issuer to file a registration statement for the offering of securities in the U.S. etc.. S. 11.02 provides for the making of a range of amendments with consent of debtholders. This is why Blakes specified these sections in their email to Torys as not all amendments are sent to the specified creditors. I think it would be worthwhile to have a further internal call with Blakes later this morning so that we have a full understanding of the implications of this issue.
If the Province is paying under the limited guarantee in the protection agreement, the Province would be paying in accordance with the terms and conditions of the agreements and obligations that the financing entity has entered into. If the Province determines that it is appropriate to directly assume the debt and obligations and obtains authority and approvals to do so and elects its option to do so, then upon direct assumption of the debt and derivatives, there would an opportunity for the terms be varied to be under the Province's ISDA's.
Thanks,
Malle

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** November 17, 2017 8:49 AM
**To:** Hanslep, Malle (MOF)
**Cc:** Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Veinot, Cindy (TBS); Donaldson, Mark (TBS); Nelms, Scott (MOF); Katona, Keley (MOF); Kim, John (OFA); Hume, Steen (ENERGY)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Malle
As per our discussion last evening, I understood that the compromise position re the amendments issue was for the Province to be designated as a "specified creditor" thus be informed of any amendments 10 business days prior. The sticking point, as I understand it was our preference that these requirements be part of the Indenture Trust agreement while Tory's/Osler suggested that it be part of the Protection Agreement.
So the question is if we accept the Tory's/Osler position does the Province's risk increase materially, if not then we can proceed with their suggestion, especially since the Trustee is a party to the Protection Agreement.
I don't believe there any accounting implication from either approach though leave that to Cindy and Mark.
Steve also raises the issue of other Program Agreements presumably referring to agreements for derivatives. I am not too fussed about these, since any derivative arrangement that we will be taking

on if the Protection Agreement comes into force will be under our ISDA. Maybe Mike may have something to add to this.
Thanks
Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Thursday, November 16, 2017 8:37 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Hopefully I have captured everyone who is usually copied on these.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** November-16-17 8:29 PM
**To:** 'ASHBOURNE, STEPHEN'; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.
Many thanks,
Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital

Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com [osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Gadi Mayman; Mike Manning; Ronald Kwan; Veinot, Cindy (TBS); Mark Donaldson (MOF); Scott Nelms (ENERGY); Keley Katona (ENERGY); John Kim; Steen Hume (CAB) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 8:49:22 AM |

Hi Malle

As per our discussion last evening, I understood that the compromise position re the amendments issue was for the Province to be designated as a "specified creditor" thus be informed of any amendments 10 business days prior. The sticking point, as I understand it was our preference that these requirements be part of the Indenture Trust agreement while Tory's/Osler suggested that it be part of the Protection Agreement.

So the question is if we accept the Tory's/Osler position does the Province's risk increase materially, if not then we can proceed with their suggestion, especially since the Trustee is a party to the Protection Agreement.

I don't believe there any accounting implication from either approach though leave that to Cindy and Mark.

Steve also raises the issue of other Program Agreements presumably referring to agreements for derivatives. I am not too fussed about these, since any derivative arrangement that we will be taking on if the Protection Agreement comes into force will be under our ISDA. Maybe Mike may have something to add to this.

Thanks

Ken k

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Thursday, November 16, 2017 8:37 PM

**To:** Gadi Mayman ; Mike Manning ; Ken Kandeepan ; Ronald Kwan ; Veinot, Cindy (TBS) ; Mark Donaldson (MOF) ; Scott Nelms (ENERGY) ; Keley Katona (ENERGY) ; John Kim ; Steen Hume (CAB)

**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Hopefully I have captured everyone who is usually copied on these.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** November-16-17 8:29 PM
**To:** 'ASHBOURNE, STEPHEN'; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow. Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP [torys.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes
**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ken Kandeepan; Anna Strathy; Veinot, Cindy (TBS); Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Cc:** | ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Wednesday, November 15, 2017 10:01:37 AM |

Hi – Sorry I just saw that Steve had already sent this out to the group so can ignore my attachments.

**From:** Hanslep, Malle (MOF)
**Sent:** November 15, 2017 9:27 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA) (Anna.Strathy@ofina.on.ca); Veinot, Cindy (TBS); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA) (Carlos.Yep@ofina.on.ca); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Usman Zahid (Usman.Zahid@ofina.on.ca); Hirani, Anis (OFA) (Anis.Hirani@ofina.on.ca); Kim, John (OFA); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Gavaris, Hresa (OFA); John Psinas (John.Psinas@ofina.on.ca); Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Cc:** ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com)
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Hi all,

These revisions were sent out by Steve last evening. Please review to ensure all the comments at the meeting yesterday were captured. Also, please review s. 4.01 in particular as based on discussions with Steve last evening the language was modified a bit to change it so the Province may disagree with the amount for the protection agreement maximum proposed by OPG on reasons related to the inconsistencies or inaccuracies as opposed to agreeing as opposed to confirming agreement. Please let us know if you have comments on this. Thanks.

Malle

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November 14, 2017 8:30 PM
**To:** Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -

TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com [osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.
Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | McKinlay, Tom (MAG) |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Anna Strathy; Gadi Mayman; Ken Kandeepan; Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas; Steen Hume (CAB); Scott Nelms (ENERGY) |
| **Cc:** | "stephen.ashbourne@blakes.com"; Thouin, Alena (ENERGY) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Thursday, November 09, 2017 3:48:30 PM |
| **Attachments:** | OPG Indemnity-OFHP.PDF |

Attached is the signed OPG indemnity.

**From:** Hanslep, Malle (MOF)
**Sent:** November 9, 2017 10:22 AM
**To:** Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
Also, I notice that there is reference in the Process Agreement's changes to the Province's indemnity agreement in favour of OPG dated June 1, 2017. Could Energy circulate that agreement to the group? Thank you.
Malle

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November 9, 2017 10:16 AM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
I was mistaken in my first email – the comments attached in my earlier email are consolidated comments from the Dealer's Counsel AND OPG's counsel (Osler's and Tory's).
Best,
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November 9, 2017 10:04 AM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); 'John Psinas'; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached the Dealer's Counsel's comments on the Change of Law Protection Agreement and the Change of Law Process Agreement. Note that we have not yet received comments from OPG and these are only the Dealer's comments.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** November 9, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>;

tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>

**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou

de le divulguer sans autorisation.

**********

**EXECUTION VERSION**

# INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** effective as of this 1st day of June, 2017.

**BETWEEN:** **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

**OF THE FIRST PART,**

**Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy**

(hereinafter called the "**Province**")

**OF THE SECOND PART**

**WHEREAS** the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

**AND WHEREAS** the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

**NOW THEREFORE**, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

   (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

   (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this indemnity agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

***[Signature Page Follows]***

**NOW THEREFORE**, the parties have executed this indemnity agreement effective as of the day and year first written above.

**ONTARIO POWER GENERATION INC.**

By: Ken Hartwick

Ken Hartwick
Chief Financial Officer and SVP - Finance

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Glenn Thibeault
Minister of Energy

**NOW THEREFORE**, the parties have executed this indemnity agreement effective as of the day and year first written above.

**ONTARIO POWER GENERATION INC.**

By: _____

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Glenn Thibeault
Minister of Energy

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Tobias P. Whitfield (MOF); Anna Strathy; Gadi Mayman; Ken Kandeepan; Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas; Steen Hume (CAB); Scott Nelms (ENERGY) |
| **Cc:** | "stephen.ashbourne@blakes.com"; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Thursday, November 09, 2017 10:22:01 AM |

Also, I notice that there is reference in the Process Agreement's changes to the Province's indemnity agreement in favour of OPG dated June 1, 2017. Could Energy circulate that agreement to the group? Thank you.
Malle

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November 9, 2017 10:16 AM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

I was mistaken in my first email – the comments attached in my earlier email are consolidated comments from the Dealer's Counsel AND OPG's counsel (Osler's and Tory's).
Best,
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November 9, 2017 10:04 AM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); 'John Psinas'; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached the Dealer's Counsel's comments on the Change of Law Protection Agreement and the Change of Law Process Agreement. Note that we have not yet received comments from OPG and these are only the Dealer's comments.
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** November 9, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Hanslep,

Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may

have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.
In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.
Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ken Kandeepan; Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas; Steen Hume (CAB); Scott Nelms (ENERGY) |
| **Cc:** | "stephen.ashbourne@blakes.com"; Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Thursday, November 09, 2017 10:15:53 AM |

I was mistaken in my first email – the comments attached in my earlier email are consolidated comments from the Dealer's Counsel AND OPG's counsel (Osler's and Tory's).

Best,

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November 9, 2017 10:04 AM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); 'John Psinas'; Hume, Steen (ENERGY); Nelms, Scott (MOF)
**Cc:** 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
**Subject:** FW: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached the Dealer's Counsel's comments on the Change of Law Protection Agreement and the Change of Law Process Agreement. Note that we have not yet received comments from OPG and these are only the Dealer's comments.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** November 9, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes
**Blake, Cassels & Graydon LLP**

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Mansoori, Nina; Feldman, Michael; Saulnier, Brett; "WONG Leslie -LAWDIV"; LEE John -TREASURY; RYFA Ken -TREASURY; Ramchandani, Rima |
| **Cc:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; Mike Manning; Ronald Kwan; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca); Tom McKinlay (MAG); VINER, JON; PRESTAGE, JA; Daniel Cayley (ENERGY); Gadi Mayman |
| **Subject:** | RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 4:24:49 PM |
| **Attachments:** | 23239361-v12-CLPA - Process Agreement.DOCX<br>23239361-vpdf-CLPA - Process Agreement.PDF<br>23239360-v15-CLPA - Protection Agreement.DOCX<br>23239360-vpdf-CLPA - Protection Agreement.PDF |

Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 8:29 PM
**To:** ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.

Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -

TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>

**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Draft: November 17, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[1]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[2]

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

---

[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare.

[2] Once agreements are settled, Province to provide draft notice.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used, (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Not less than 10 Business Days prior to (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

**2.02 Covenants**

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) resign as the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the

Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement nor in the Change of Law Protection Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation, and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[3]

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar

[3] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.

circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

**3.02 Intentionally Deleted**

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the

"**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or

in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 <u>Representations and Warranties of the Province</u>**

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[4]

### 6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit A (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Information Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province; and

[4] Note: Lawyers to discuss assumption mechanics.

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

**6.03 Settlement of Terms**

Following receipt and review by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice and Article VI of this Agreement shall continues to apply unaffected.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use commercially reasonable efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement][NTD: Subject to the input of the dealers.]**[5]

[5] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been

---

Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 <u>Assignment</u>**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

## SCHEDULE A
## DEFINED TERMS[6]

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[6] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Information Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement but in no event shall it include obligations to service providers or amounts payable by the Financing Entity to a counterparty under any Funding Obligation Agreement permitted to be entered into by the Financing Entity pursuant to the Program Agreements under which an amount in excess of $1 Million in the aggregate would be payable.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION INFORMATION NOTICE**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[1] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[2]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[3]

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

[1] ~~We do not believe OPG is entering into this Agreement as agent on behalf of the Trust. Rather, OPG is entering into this Agreement at the request of its shareholder, the Province, in order to satisfy the Province's reporting requirements regarding the Fair Hydro Plan.~~

[2] ~~Blakes to advise what they would like to see as evidence of OPG's establishment of the Trust as a financing entity. OPG can send the Province the retainer of Computershare to act as issuer trustee to the Trust~~[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare.

[3] Once agreements are settled, Province to provide draft notice.

All things necessary to make this Agreement a valid and legally binding agreement of OPG~~,~~ and ~~of~~ the Province ~~in accordance with the Act~~, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**
**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

**1.01 Interpretation**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the

designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used ~~or~~, (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or~~,~~ supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Not less than 10 Business Days prior to (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) ~~(c)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) ~~(d)~~ Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

**2.02 Covenants**

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of ~~its~~the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements ~~(other than Funding Obligation Agreements)~~, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;[4] provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) resign as the Manager under the Management Agreement; or

(C) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) ~~(ii)~~ promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) ~~(iii)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing

[4] ~~Note to the Province: This change was made to ensure that the Province does not have veto rights over the financial terms of the Funding Obligations (consistent with the overall agreement including in particular sections 3.01 and 3.04(a)).~~

Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement nor in the Change of Law Protection Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation, and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[~~5~~3]

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in

[~~5~~3] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.

compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

**3.02 ~~Acknowledgment~~Intentionally Deleted**

~~The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, any two senior officers of OPG are authorized to deliver the certificate referred to in Subsection **[4.02(b)]** of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has delivered to the Province all certifications required by the Province in connection with the incurrence of the Primary Obligations in respect of which such certificate is delivered.~~

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection

Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable

bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

### 5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[64]

### 6.01 Election by the Province

~~At~~Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor~~. To make such~~ by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province ~~shall duly complete and~~may deliver to OPG a notice in the form of Exhibit A (an "**~~Exploration~~Election Information Notice**"). The ~~Exploration~~Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the ~~Exploration~~Election Information Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the ~~Exploration~~Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions

[64] Note: Lawyers to discuss assumption mechanics.

that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province; and

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

**6.03 Settlement of Terms**

~~Within 30 Business Days following~~Following receipt and review by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it ~~will~~expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province ~~intends~~expects that assignment and assumption will be effected~~, which may not be earlier than the Proposed Assumption Date~~. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section ~~[~~6.01~~]~~ of the Change of Law Protection Agreement~~, which will specify such date as the "Assumption Closing Date" for the purposes thereof~~. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice and Article VI of this Agreement shall continues to apply unaffected.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use ~~its~~ commercially reasonable efforts to ~~cause the Financing Entity to~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the

case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement]|[NTD: Subject to the input of the dealers.]**[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[5] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.[7]

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

~~By:~~ ~~**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager~~

By: _____

Name:
Title:

By: _____

Name:
Title:

[7] ~~The Indenture Trustee was removed as a party to this Agreement as it is not subject to any of the provisions in this Agreement.~~

**SCHEDULE A**
**DEFINED TERMS[86]**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement. ~~[NTD: To confirm if Change of Law Protection Agreement will attach a form of assumption.]~~

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar

[8] ~~Province should not have~~[6] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. ~~Province is given sufficient notice of all amendments by the terms of this Agreement~~All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"~~**Exploration**~~**Election Information Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement but~~, for greater certainty, excludes the "other amounts owing in respect of the funding obligations" in Section 2(2) of the General Regulation~~ in no event shall it include obligations to service providers or amounts payable by the Financing Entity to a counterparty under any Funding Obligation Agreement permitted to be entered into by the Financing Entity pursuant to the Program Agreements under which an amount in excess of $1 Million in the aggregate would be payable.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ~~EXPLORATION~~ELECTION INFORMATION NOTICE**

Document comparison by Workshare Compare on Friday, November 17, 2017 4:16:28 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/11 |
| Description | TOR_2528-#23239361-v11-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/12 |
| Description | TOR_2528-#23239361-v12-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 64 |
| Deletions | 67 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 135 |

**Draft: November 17, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain activities and to provide certain assurances in relation to this Agreement, on which the Province will rely.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture[3].

[3] With respect to the possibility of unsanctioned amendments, the OPG proposal would allow amendments to be made in favour of bondholders to permit individual bondholders to sue the Province under this agreement. This is

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

---

one circumstance that demonstrates why the Province needs the right to know about and consider all underlying amendments.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the

Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. Not less than 3 Business Days prior to each Payment Date occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, the Manager shall deliver a written statement, substantially in the form attached as Exhibit A.1 (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Payment Date, together with a detailed description identifying such Approved Obligations, the nature and amount of payments due and payable thereunder on the Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Payment Date, the Province shall pay the Aggregate Approved Obligations Amount [to the Indenture Trustee and the Indenture Trustee][4] shall deposit such amount to the Protection Account.

iii. On each such Payment Date, [the Financing Entity shall cause] the Paying Agent[5] [to] shall apply all amounts on deposit in the Protection Account to

[4] Confirm payment mechanics. Consider direct deposit. Confirm that no set-off if pay through indenture trustee.

[5] To be effective, will need to add the Paying Agent as a party to this agreement.

pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the applicable payment provisions of the Trust Indenture applicable to the making of such payments on the Payment Date (each, a "**Beneficiary Payee**")[6].

iv. On any Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture and subject to Section 2.04(b), be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Payment Date;

(ii) the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount on remaining deposit in

[6] For example, the effect of this is that senior notes will receive cash earmarked for sub notes based on the scheduled amounts payable for sub notes. Confirm that is the intention.

the Protection Account that has not been applied to pay Beneficiary Payees on the Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the payment amounts, if any, and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(d) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(e) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

**2.02 Intentionally Deleted.**

**2.03 <u>Absence of Set-off</u>**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[7] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the [Indenture Trustee][8] shall apply all amounts paid by the Province into the Protection Account on a Payment Date in respect of an Approved Obligation to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a)[9]. Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[10]. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

---

[7] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[8] Conform.

[9] For example, amounts payable in respect of subnotes will not get the amounts payable to them based on scheduled payments since senior notes will preempt them under the acceleration waterfall.

[10] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or

until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section 8.02.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements[11] and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

[11] The deletion of the earlier proviso in this draft is based on the understanding that the Province will receive adequate notices of these event under the Trust Indenture. OPG will agree not to allow any of these events without confirming to the Province under the Process Certificate that the changes are within the agreed scope of the Reviewed Documents, etc.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied [at the time the Primary Obligation was incurred][12].

### 4.02 Adherence Conditions

[There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation.][13] The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence [or any amendment][14] of the Primary Obligation, and (ii) [one Business Day after] [on] the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that OPG has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

---

[12] Still under consideration. Tied to the discussion around authorized "amendments".

[13] Under consideration by the Province. Province is comfortable that immaterial (<1M) obligations need not be subject to these adherence provisions.

[14] Still under consideration. Tied to the discussion around authorized "amendments".

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights,

interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

**5.03 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[15]

**5.04 Representations and Warranties**

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

**6.01 Delivery of Assumption Notice**

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

[15] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

**6.02 Cooperation to Implement the Assignment and Assumption**

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[16]

**6.03 Effect of Assumption**

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

**6.04 Interim Period**

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

**6.05 Rights in respect of the Assets Comprising the Collateral**

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

[16] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity in any of the following circumstances:

(a) following the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered[17].

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

[17] This will be affected by the resolution of the "amendments" point.

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:

Title:

## SCHEDULE A
## DEFINED TERMS[18]

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of a Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Payment Date, the amount due and payable to the Beneficiary on such Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Payment Date, the amount that would be available to be paid to the Beneficiary on such Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amounts available under such applicable payment provisions of the Trust Indenture would be limited to the Clean Energy Adjustment payable in respect of such month.

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the Finding Obligation Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of the form of assumption agreement set forth in Exhibit E.

[18] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][19]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act as of the date of this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[19] Process Agreement references define Suspension Rights. If dealers and OPG are comfortable with broad suspension rights (subject to the agreement of the Province with OPG under Process Agreement, not to implement suspension rights other than for Program Breach or Breach Event), then may be able to better cleanse this Agreement of operative references to the Process Agreement.

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, [as amended, supplemented, restated or otherwise modified from time to time].[20]

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, [as amended, supplemented, restated or otherwise modified from time to time].

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Paying Agent**" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Date**" means the 15th day of each month.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

[20] Still under consideration. Tied to the discussion around authorized "amendments".

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] [as amended, supplemented, restated or otherwise modified from time to time].

["**Process Certificate**" has the meaning ascribed thereto in the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement, or (b) this Agreement or any of the agreements under which Approved Obligations arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement in respect of Approved Obligations that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT A.1**
**FORM OF GUARANTOR SETTLEMENT STATEMENT**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain activities and to provide certain assurances in relation to this Agreement, on which the Province will rely.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture[3].

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

[3] With respect to the possibility of unsanctioned amendments, the OPG proposal would allow amendments to be made in favour of bondholders to permit individual bondholders to sue the Province under this agreement. This is one circumstance that demonstrates why the Province needs the right to know about and consider all underlying amendments.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may ~~provide~~deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to ~~pay~~make payments in respect of the Approved Obligations ~~as provided~~at the times, in the amounts and subject to the requirements specified in this Agreement. From and after ~~the~~such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations ~~and receive Subrogation Amounts in accordance with the following procedures~~ (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. ~~One~~Not less than 3 Business ~~Day~~Days prior to each Payment Date ~~when any payment or payments are to be made in respect of one or more Approved Obligations, the Manager shall advise the Province in writing of~~occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, the Manager shall deliver a written statement, substantially in the form attached as Exhibit A.1 (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of ~~such Approved Obligations on such Payment Date~~the Approved Obligations that are due and payable on such Payment Date, together with a detailed description identifying such Approved Obligations, the nature and amount of payments due and payable thereunder on the Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement,

and details regarding any default in performance by any party obligated thereunder.

ii. On each such Payment Date, the Province shall pay the Aggregate Approved Obligations Amount [to the Indenture Trustee and the Indenture Trustee][4] shall deposit such amount to the Protection Account.

iii. On each such Payment Date, [the Financing Entity shall cause] the Paying Agent[5] [to] shall apply ~~the Aggregate Approved Obligations Amount deposited to~~all amounts on deposit in the Protection Account to pay ~~in full to the applicable Beneficiaries~~each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Payment Date the Approved Obligation Amount ~~of each Beneficiary payable~~for such Beneficiary in respect of such Approved Obligation on such Payment Date; provided that if ~~for any reason~~ the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount ~~available~~on deposit in the Protection Account on the Payment Date shall be applied to pay Beneficiaries in the order of priority in which ~~the applicable~~such Approved Obligations are payable ~~in~~under the ~~section~~applicable payment provisions of the Trust Indenture ~~which would otherwise be~~ applicable to the making of such payments on the Payment Date (each, a "**Beneficiary Payee**")[6].

iv. On any Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture and subject to Section 2.04(b), be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Payment Date;

(ii) ~~iv. The Manager shall prepare payment instructions for the Payment Date under each section of the Trust Indenture applicable to the making of the payments under clause 2.01(a)iii allocating the amounts available to be allocated under each such section (which~~

[4] Confirm payment mechanics. Consider direct deposit. Confirm that no set-off if pay through indenture trustee.
[5] To be effective, will need to add the Paying Agent as a party to this agreement.
[6] For example, the effect of this is that senior notes will receive cash earmarked for sub notes based on the scheduled amounts payable for sub notes. Confirm that is the intention.

~~for greater certainty, are amounts other than the Approved Obligations Amounts) on the basis that: (A) for the purpose of determining the amount of the payment to each applicable Person (including the Beneficiaries of Approved Obligations), the payments made under clause 2.01(a)iii are disregarded, and (B) any amounts so determined which are payable to the Beneficiaries that have been paid under clause 2.01(a)iii are paid instead to the Province (such payments being "**Subrogation Amounts**").~~ the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount on remaining deposit in the Protection Account that has not been applied to pay Beneficiary Payees on the Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) ~~(b)~~ For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the payment amounts, if any, and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(d) ~~(c)~~ Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(e) ~~(d)~~ Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(f) ~~(e)~~ The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include ~~the loss represented by the failure to receive the principal and interest itself~~any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[37] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period,

[37] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the [Indenture Trustee][8] shall apply ~~the full amount~~all amounts paid by the Province into the Protection Account on a Payment Date in respect of an Approved Obligation to pay the ~~corresponding amount~~amounts due and payable to the ~~applicable~~ Beneficiaries ~~under the Approved Obligation~~ as and to the extent provided for in Section 2.01(a)[9]. Upon a payment having been made by or on behalf of the Province into the Protection Account ~~in respect of an Approved Obligation~~, the ~~amount~~amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved ~~Obligation~~Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[4][10]. For greater certainty, the obligations arising in respect of ~~the~~an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

[8] Conform.

[9] For example, amounts payable in respect of subnotes will not get the amounts payable to them based on scheduled payments since senior notes will preempt them under the acceleration waterfall.

[4][10] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section ~~6.03~~ 8.02.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements[11] and this Agreement, to:

[11] The deletion of the earlier proviso in this draft is based on the understanding that the Province will receive adequate notices of these event under the Trust Indenture. OPG will agree not to allow any of these events without confirming to the Province under the Process Certificate that the changes are within the agreed scope of the Reviewed Documents, etc.

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied [at the time the Primary Obligation was incurred][12].

[12] Still under consideration. Tied to the discussion around authorized "amendments".

### 4.02 Adherence Conditions

[There shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Funding Obligation.][13] The following shall be the Adherence Conditions applicable in relation to a Primary Obligation that is a Funding Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) ~~OPG (~~the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) ~~delivers an officer's certificate~~and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence [or any amendment][14] of the Primary Obligation, and (ii) [one Business Day after] [on] the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that OPG has delivered to the Province ~~all certifications required by the Province in connection with the incurrence~~a Process Certificate in accordance with Section **[3.01]** of the ~~Primary Obligations; and [**NTD: does this work for derivatives? They are often priced at the same time they are entered into.**]~~Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

[13] Under consideration by the Province. Province is comfortable that immaterial (<1M) obligations need not be subject to these adherence provisions.

[14] Still under consideration. Tied to the discussion around authorized "amendments".

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

### 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary ~~for~~to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture~~.~~ in the manner and to the extent contemplated in Section 2.01.

### 5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[~~5~~15]

### 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on

[~~5~~15] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[616]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

[616] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity in any of the following circumstances:

(a) ~~upon~~following the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered[17].

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").~~[7]~~

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

[17] This will be affected by the resolution of the "amendments" point.

~~[7] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.~~

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their ~~rights~~benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS[8][18]

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of ~~any~~a Payment Date, the aggregate of the Approved Obligation Amounts for such Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of ~~any Payment Date and~~ an Approved Obligation~~, either~~ under which an amount is due and payable on a Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Payment Date, the amount due and payable to the Beneficiary on such Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in ~~the applicable section in full~~such payment provisions that are due and payable on the Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Payment Date, the~~aggregate~~ amount that would be ~~payable~~available to be paid to the Beneficiary on such Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that ~~Servicer CEA Collections in respect of each relevant month during each Reference Period from and after May, 2021 are equal to the Finance Amount in respect of such Reference Period divided by the number of months in such Reference Period~~the amounts available under such applicable payment provisions of the Trust Indenture would be limited to the Clean Energy Adjustment payable in respect of such month.

[8] ~~Province should not have~~[18] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture, Province will not require veto rights over changes to the defined terms in the MTI. ~~Province is given sufficient notice of all amendments by the terms of the various agreements~~All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the Finding Obligation Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of the form of assumption agreement set forth in Exhibit E.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][9][19]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act as of the date of this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

[9] ~~Lawyers to discuss how to~~[19] Process Agreement references define Suspension Rights. If dealers and OPG are comfortable with broad suspension rights (subject to the agreement of the Province with OPG under Process Agreement, not to implement suspension rights other than for Program Breach or Breach Event), then may be able to better cleanse this Agreement of ~~all~~operative references to the Process Agreement~~ so that a copy of such agreement need not be provided to the rating agencies~~.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the

applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" ~~means the~~ has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity , [as amended, supplemented, restated or otherwise modified from time to time].[20]

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, [as amended, supplemented, restated or otherwise modified from time to time].

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"~~**Payment Date**~~**Paying Agent**" has the meaning ascribed thereto in the Trust Indenture.

"**Payment Date**" means the 15th day of each month.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

[20] Still under consideration. Tied to the discussion around authorized "amendments".

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM] [as amended, supplemented, restated or otherwise modified from time to time].

["**Process Certificate**" has the meaning ascribed thereto in ~~Section 3.01 of~~ the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay ~~Obligations Secured~~Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement, or (b) this Agreement or any of the agreements under which Approved Obligations ~~Secured~~ arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay ~~Obligations Secured~~Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligation Amounts to persons who would be Beneficiary Payees under this Agreement in respect of Approved Obligations ~~Secured~~ that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in ~~Section~~ subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

~~23239360.13~~23239360.15

**EXHIBIT A.1**
**FORM OF GUARANTOR SETTLEMENT STATEMENT**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

Document comparison by Workshare Compare on Friday, November 17, 2017 4:11:56 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/13 |
| Description | TOR_2528-#23239360-v13-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/15 |
| Description | TOR_2528-#23239360-v15-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 179 |
| Deletions | 95 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 274 |

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Daniel Cayley (ENERGY) |
| **Cc:** | Steen Hume (CAB); VINER, JON; PRESTAGE, JA |
| **Subject:** | RE: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement |
| **Date:** | Friday, November 03, 2017 7:13:07 AM |
| **Attachments:** | Change of Law Protection Agreement and Change of Law Process Agreement.msg |

Hi again. It appears my email did not successfully attach my transmittal email sent to Torys last night. Trying again …

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** ASHBOURNE, STEPHEN
**Sent:** Friday, November 03, 2017 7:08 AM
**To:** 'Anna Strathy'; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)
**Cc:** Steen Hume (CAB); VINER, JON; PRESTAGE, JA
**Subject:** Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement

Hi.

After our meeting yesterday, we made the changes identified in the attached blacklines and sent the clean versions to Torys (transmittal email is included below, sent Thursday at 9 p.m. ET).

Please note that these revised versions delete a number of the "Notes" we had previously included for your consideration and our follow-up. Those deletions do not necessarily mean that an issue has been resolved, but rather we thought it best to not identify certain of those deleted items in the external circulation. Our work to resolve those open items will be on-going.

As discussed, Mike or Ken will be sending a follow-on email to OPG to emphasize that these drafts represent an advanced consideration of what the Province is able to do, that the drafts have moved considerably towards OPG's proposed approach, and that only comments on critical issues will be appropriate given the limited time available. You will see that my cover email to Torys suggested that the next step should be for the Province to receive a consolidated mark-up that reflects all essential inputs (i.e., OPG, E&Y, Dealers, Osler and ideally rating agencies) and then to have an all-hands business meeting to resolve any outstanding points. It would be helpful if a similar approach is proposed in Mike's/Ken's follow-on email.

Please feel free to call if you have any questions or concerns.

Regards, Steve

<< Message: Change of Law Protection Agreement and Change of Law Process Agreement.msg >>
<< File: 23239361-vpdf-CLPA - Process Agreement.PDF >>
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
**To:** Feldman, Michael [mfeldman@torys.com]; Ramchandani, Rima (rramchandani@torys.com) [rramchandani@torys.com]; Mansoori, Nina (nmansoori@torys.com) [nmansoori@torys.com]; Hill, Krista (khill@torys.com) [khill@torys.com]
**CC:** Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]; Tom McKinlay (MAG) [Tom.McKinlay@ontario.ca]; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) [Alena.Thouin@ontario.ca]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Thursday, November 02, 2017 21:02:15
**Attachment 1:** 23239361-v7-CLPA - Process Agreement.DOCX
**Attachment 2:** 23239360-v9-CLPA - Protection Agreement.DOCX

---

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act, have been done.

---

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

### 2.01 Deliveries to the Province

(a) Not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.

(c) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional of replacement Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]

### 2.02 Covenants

(a) OPG shall, as the FSM, cause the Financing Entity to:

[2] Note: The tax documents to be provided to the Province are under consideration.

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(c) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast setting out OPG's expectations regarding the aggregate maximum amount of

Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction

in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or

instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate, and each shall use its best efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity, permitting

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement);

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made; or

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**[5]

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] Note: To be confirmed if required.

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any

other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved

Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated

Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under

the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY

HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

---

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Collection Account in Satisfaction**

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[5].

---

[3] Under consideration.

[4] This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.

[5] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03].

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

**3.01 The Indenture Trustee**

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

**3.02 Acceptance of Trusts**

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things,

[6] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

**4.03 Evidence of Satisfaction**

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

**5.01 Assignment and Subrogation**

Upon paying an amount in respect of an Approved Obligation:

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[8]

[7] This concept needs to be reflected in the Trust Indenture.

[8] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[9] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

**7.02 Not Responsible for Recitals or Issuance of Notes**

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

**7.03 Representations and Covenants of the Indenture Trustee**

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM or the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for [Financing Entity]
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.08 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

---

[10] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] Note: To be confirmed if required.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

[12]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and (b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the Financing Entity's receipt of amounts in respect of its Investment Interest and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Anis Hirani |
| **Cc:** | Hresa Gavaris; Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Subject:** | RE: Continuation: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Tuesday, November 14, 2017 8:27:34 AM |

Hi Anis,

We are hosting a meeting here at 1 Dundas (Executive Boardroom) that will run from 10am to 1pm today. It occurred to me that we should probably provide lunch around noon.

Would you be able to take care of the lunch order? At this point, I'm not sure how many will attend in person versus dial-in. But at our last meeting of this length, we had almost everyone in the room. Perhaps you could use the same order that you used on Thursday, November 2nd?

Thanks, Anna

-----Original Appointment-----
**From:** Anna Strathy
**Sent:** Tuesday, November 14, 2017 8:14 AM
**To:** Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY); Tim Christie (ENERGY); Hilary Cox (ENE)
**Subject:** Continuation: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** Tuesday, November 14, 2017 10:00 AM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Please advise me if you will attend in person and require access to the 14th floor of 1 Dundas.

The purpose of this meeting/call is to continue Friday's discussion of OPG's edits to the Protection and Process Agreements

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to Moderate

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Hilary Cox (ENE) |
| **Cc:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: Continuation: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Tuesday, November 14, 2017 8:19:00 AM |

Hi Hilary,

You may have seen the invite that I sent out just now to Steen, Daniel and Tim. This meeting will be the last opportunity for us to provide input/edits to the Provincial Protection and Process agreements as we have committed to assisting OPG in meeting their Board timelines (materials, including the Protection and Process Agreements must be sent to their Board members by tomorrow for their meeting on the 20th).

We would really appreciate representation from Energy at today's meeting – even just one representative would be sufficient – in order to make sure we are accounting for all of the policy considerations. Happy to discuss.

Thanks, Anna

-----Original Appointment-----
**From:** Anna Strathy
**Sent:** Tuesday, November 14, 2017 8:14 AM
**To:** Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY); Tim Christie (ENERGY)
**Subject:** Continuation: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** Tuesday, November 14, 2017 10:00 AM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Please advise me if you will attend in person and require access to the 14th floor of 1 Dundas.

The purpose of this meeting/call is to continue Friday's discussion of OPG's edits to the Protection and Process Agreements

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to Moderate

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY); Tim Christie (ENERGY) |
| **Subject:** | RE: Continuation: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Wednesday, November 15, 2017 8:55:44 AM |
| **Attachments:** | RE Change of Law Protection Agreement and Change of Law Process Agreement.msg<br>23239360-vpdf-CLPA - Protection Agreement.PDF<br>23239361-vpdf-CLPA - Process Agreement.PDF |

---

INTERNAL CIRCULATION – DO NOT ON-SEND
Attached for your information is the original transmittal to OPG/Dealers last night, including our mark-ups of the Protection Agreement and the Process Agreement. I have also included blacklines showing the changes to the agreements from the internal versions circulated to this group on Friday. Regards, Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086
-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** Tuesday, November 14, 2017 8:14 AM
**To:** Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY); Tim Christie (ENERGY)
**Subject:** Continuation: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** Tuesday, November 14, 2017 10:00 AM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656
Please advise me if you will attend in person and require access to the 14th floor of 1 Dundas.
The purpose of this meeting/call is to continue Friday's discussion of OPG's edits to the Protection and Process Agreements
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
**To:** Sebastiano, Rocco [RSebastiano@osler.com]; Ramchandani, Rima [rramchandani@torys.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]; Tom McKinlay (MAG) [Tom.McKinlay@ontario.ca]; Alena.Thouin@ontario.ca [Alena.Thouin@ontario.ca]
**CC:** Feldman, Michael [mfeldman@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Saulnier, Brett [bsaulnier@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Conner, Robbin [Robbin.Conner@gs.com]
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Tuesday, November 14, 2017 21:30:27
**Attachment 1:** image001.gif
**Attachment 2:** image002.gif
**Attachment 3:** image003.gif
**Attachment 4:** 23239360-vpdf-CLPA - Protection Agreement.pdf
**Attachment 5:** 23239360-vpdf-CLPA - Protection Agreement.pdf
**Attachment 6:** 23239361-vpdf-CLPA - Process Agreement.PDF
**Attachment 7:** 23239361-v10-CLPA - Process Agreement.DOCX
**Attachment 8:** 23239361-vpdf-CLPA - Process Agreement.PDF
**Attachment 9:** 23239360-v12-CLPA - Protection Agreement.DOCX

---

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review

and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

**Rocco Sebastiano**
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
[osler.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400  Fax: 416-863-2653
**blakes.com**[blakes.com] **| Twitter**[twitter.com] **| Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

OSLER

osler.com

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**~~[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**~~[NAME OF INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and~~Computershare Trust Company of Canada, in its capacity as trustee ~~of the **[FINANCING ENTITY]**, a trust settled by the FSM~~(the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as ~~Indenture Trustee and in its capacity as trustee for the in accordance with the Trust~~ Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity ~~in its capacity as Financing Entity Trustee~~, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

~~OPG~~The FSM and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity ~~Trustee~~, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other ~~agreement~~Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation.

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity ~~Trustee~~

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, ~~(~~without Acceleration~~)~~, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

~~[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

~~[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection Account~~ Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account~~.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.]~~[3]

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

[3] ~~Under consideration.~~

### 2.03 Absence of Set-off

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

### 2.04 Payment into ~~Collection~~Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[4] ~~This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.~~

Obligation to the extent so paid[5]6. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment,

[5] ~~Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03~~]~~.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if ~~(a)~~ the Adherence Conditions applicable thereto have been satisfied~~; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation~~.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;~~

~~(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;~~

(b) ~~(d)~~ the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the ~~Province and the~~ Indenture Trustee, ~~one Business Day~~ prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), ~~setting out the following with respect to the Primary Obligation:~~confirming that the FSM

[6] ~~Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.~~

has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

~~i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and~~

~~ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and~~

(c) ~~(c)~~ the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.[7]

### 4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be ~~defect~~defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## ~~RIGHTS OF THE~~ PROVINCE MATTERS

### 5.01 Assignment and Subrogation

~~Upon paying an amount in respect of an Approved Obligation:~~

~~(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or~~

~~(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,~~

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

~~5.03 Voting Rights under "Outstanding Notes"~~

~~Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7]:~~

~~(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and~~

~~(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.~~

## 5.03 ~~5.04~~ Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

## 5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[7] ~~This concept needs to be reflected in the Trust Indenture.~~

[8] ~~General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE~~ Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee~~.~~ but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

---

[9] Further details regarding obtaining of third party consents and rating agency approvals to be ~~considered~~provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize

the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

~~7.04~~ ~~**Release of all Collateral**~~

~~(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.~~

~~(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.~~

~~7.05~~ ~~**Right to Notice and Attend Meetings**~~

~~The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.~~

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

**8.01** ~~**Suspension Notice**~~**Suspension Notice**

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) ~~shall be provided by the FSM or the Province to the Indenture Trustee promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(b) ~~may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the ~~Financing Entity~~Limited Guarantee shall not ~~incur~~apply in respect of any ~~new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province~~Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o Ontario Power Generation Inc.~~

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 ~~Force Majeure~~Intentionally Deleted**

~~In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.~~

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 ~~9.08~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY**~~**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE** ~~**FOR [FINANCING ENTITY]**~~**OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

**CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

~~["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]~~

~~["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]~~[11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of ~~OPG~~the FSM under the Process Agreement; or (b) any representation or warranty made by ~~OPG~~the FSM, any certification made by ~~OPG~~the FSM under the Process Agreement, or any certification made by ~~OPG~~the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM~~, the Administrative Agent~~ or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as

~~[10] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.~~
~~[11] Note: To be confirmed if required.~~

the FSM~~, the Administrative Agent~~ or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

~~"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "~~Investment Interest~~investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

~~[~~"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.~~]~~

~~[~~"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.~~]~~[12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, ~~and acknowledged and~~

[12] ~~Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

~~accepted by~~as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation~~,~~ or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (~~a~~i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; ~~and~~ (~~b~~ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and ~~OPG~~[the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection ~~Agreement Maximum"~~** ~~means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~**Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts ~~on~~in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii)

issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

Document comparison by Workshare Compare on Tuesday, November 14, 2017 7:59:23 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/9 |
| Description | TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/12 |
| Description | TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 164 |
| Deletions | 150 |
| Moved from | 6 |
| Moved to | 6 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 326 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~Ontario Power Generation Inc., as the Manager and~~Computershare Trust Company of Canada, in its capacity as ~~Manager~~trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust ~~settled by the FSM~~ under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity~~"), Ontario Power Generation Inc.~~ and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee ~~and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture~~, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The ~~FSM, as agent of the~~ Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

## 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

## 1.03 ~~1.02~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

## 1.04 ~~1.03~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

## 1.05 ~~1.04~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation. ~~To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.~~

## 1.06 ~~1.05~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

## 1.07 ~~1.06~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

## 1.08 ~~1.07~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

## 1.09 ~~1.08~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

## 1.10 ~~1.09~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

## 1.11 ~~1.10~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

## 1.12 ~~1.11~~ Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

## 1.13 ~~1.12~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

## 1.14 ~~1.13~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

## 1.15 ~~1.14~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## 1.16 ~~1.15~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

## 1.17 ~~1.16~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

## 1.18 ~~1.17~~ References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, ~~the FSM as agent for~~ the Financing Entity Trustee ~~(in its capacity~~ as trustee of the Financing Entity~~). [NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]~~.

## 1.19 ~~1.18~~ Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall,

notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable[1], without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[1] ~~Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

[2] ~~Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account ~~5 Business Days prior to the fifteen day of each calendar month~~[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.~~

**2.03 Absence of Set-off**

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

## 2.04 Payment into Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture ~~as if~~on the basis that it ~~were~~is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[3~~6~~]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[3] ~~Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement. ~~Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?~~

entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. ~~**[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**~~

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

## 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations ~~and termination of the Trust Indenture~~, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

## 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~.~~,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

# ARTICLE III
# THE INDENTURE TRUSTEE

## 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) [NTD: already covered in process certificate in section 3.01 of the Process Agreement]~~

~~(c) [NTD: already covered under Process Agreement.]~~

(b) ~~(d)~~ the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided ~~in OPG's~~by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, ~~one Business Day~~ prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) ~~(e) [NTD: This is more properly dealt with in Section 8.02~~the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.~~]~~ [7]

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

~~(a) Upon paying an amount in respect of an Approved Obligation:~~

~~i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or~~

~~ii. [as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]~~

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~Subject to Section 5.01(b), the~~The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the

Financing Entity. ~~Subject to Section 5.01(b), the~~The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) ~~(b) the~~The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province~~ will be a Specified Creditor hereunder and its entitlements~~, in its capacity as a Specified Creditor~~ are~~, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including~~, without limitation,~~ **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**~~, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv~~ and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## ~~5.03 Voting Rights under "Outstanding Notes"~~

~~**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[4]:**~~

~~[4] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).~~

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

## 5.03 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[5][8] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

## 5.04 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(a) (b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) (c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the

[5] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

~~execution and~~the execution, delivery and performance of this Agreement by the Province ~~and the performance by the Province of its obligations hereunder~~do not result in the violation of any applicable law; and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[~~6~~9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead ~~be~~become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in**

[~~6~~9] Further details regarding obtaining of third party consents and rating agency approvals to be ~~considered~~provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

**Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

~~**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**~~

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 ~~Suspension Notice~~Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) ~~shall be provided by the Province to the Indenture Trustee promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(b) ~~may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), this Change of Law Protection Agreementthe Limited Guarantee shall not apply in respect of any new Primary Obligation followingSecured incurred on or after the date oftime such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]** is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with this AgreementArticle VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the [later] of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and the Trust Indenture has been terminated;

(b) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt ofthe date that a Termination Notice from the

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

~~Province~~delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity~~, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and~~.

~~(c) [subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?] following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.~~

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

### 9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

### 9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 Intentionally Deleted

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement~~ and all such Persons who are Beneficiaries derive their rights~~. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and ~~such rights are~~shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. ~~**[NTD: Consider merging this section 9.08 with section 1.03.]**~~

### 9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[7] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

[7] ~~Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.~~

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured ~~that is a Funding Obligation or otherwise constitutes a Finance Amount.~~(a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

[**"Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means ~~[~~an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture~~]~~ or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.~~] [NTD: To be discussed.]~~

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, ~~**[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**~~

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, ~~or~~and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:00:39 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/10 |
| Description | TOR_2528-#23239360-v10-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/12 |
| Description | TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 155 |
| Deletions | 161 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 332 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to ~~the FSM, as agent of~~ the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.11 ~~1.10~~ Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.12 ~~1.11~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM ~~shall use commercially reasonable efforts~~] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; ~~and~~

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) ~~(ii) to,~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM ~~or the Financing Entity~~, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~the FSM~~OPG (or their respective designees, provided that such designees are also executive officers of ~~the FSM~~OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments ~~shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement~~under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d~~b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation ~~that would be adverse to the Issuer~~, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up,

liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) [Not less than [■]15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which shall be based onmay not exceed the Initial Forecast.

(b) Not more than [■]10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province andmay disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG willshall discuss andany discrepancies with the

Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.~~]~~

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum ~~based on~~, which may not exceed such Forecast.

(d) Not more than ~~[■]~~10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province ~~shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will~~may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss ~~and~~any discrepancies with the Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall use commercially reasonable efforts to~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) ~~(c)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of the Financing Entity enforceable against the Financing Entity~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) ~~(d)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) ~~(e)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

~~(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;~~

(a) ~~(b)~~ the execution, delivery and performance ~~by the Province~~ of this Agreement ~~does not and will not result in a violation of any applicable law;~~by the Province have been authorized by all necessary action on the part of the Province;

(b) ~~(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and~~the execution, delivery and performance of this Agreement by the Province ~~and the performance by the Province of its obligations hereunder~~do not result in the violation of any applicable law; and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS~~[2]~~

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

~~[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.~~

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured ~~is~~ attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM ~~will use commercially reasonable efforts to~~] shall cause the Financing Entity ~~to, use commercially reasonably efforts~~ to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~; provided that, this Section 6.05 shall not apply to any Obligations Secured~~, other than to the extent of payment obligations

[3] ~~Note to Province: A~~Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured ~~is required. It is impractical to have an~~. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement ~~for each type of Obligation Secured~~will work for swaps, debt and service obligations.

[4] ~~Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[~~5~~4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. ~~**[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**~~

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[~~5~~] ~~Note:~~ [4]The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. ~~**[NTD: The form of Assumption Agreement shall**~~The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement ~~**(consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We**~~, The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to ~~**otherwise**~~ address ~~**your comment**~~this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured ~~**pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows**~~on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.~~**]**

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**~~8.06 Intentionally Deleted~~[6]**

**8.06 ~~8.07~~ Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[6] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.~~ **~~[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]~~**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., ~~SOLELY~~ [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:22:37 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/8 |
| Description | TOR_2528-#23239361-v8-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/10 |
| Description | TOR_2528-#23239361-v10-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 173 |
| Deletions | 108 |
| Moved from | 5 |
| Moved to | 5 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 291 |

**Draft: November 14, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.10 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.11 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.12 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a

result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its

obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

**6.01 Election by the Province**

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within 30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

### 6.04 Cooperation to Implement the Assignment and Assumption

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM] shall cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured

[4]The Trust Indenture will need to permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

# EXHIBIT A
# FORM OF ELECTION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")~~,~~[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~[the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~[the FSM] has agreed to perform and assurances ~~OPG~~[the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~[the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the ~~Financing Entity or the~~ Financing Entity ~~Trustee~~**

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.11 ~~1.10~~ Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.12 ~~1.11~~ Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~OPG~~[THE FSM]

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~[the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~[the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~[the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~for replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~[the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~[the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]~~

~~[2] Note: The tax documents to be provided to the Province are under consideration.~~

**2.02 Covenants**

(a) ~~OPG shall, as the FSM,~~[The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of ~~(1) the Administrative Agent under the Administrative Services Agreement; or (2)~~ the Manager under the Management Agreement; or

~~(C) consolidate or merge with or into any other Person;~~

(C) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~.

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or~~

~~(H) voluntarily dissolve or liquidate.~~

(b) ~~OPG~~[The FSM] shall:

(i) comply, and ~~as the FSM~~shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected~~; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~OPG~~[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and

(ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments

under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d)(ii~~b) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~[the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~e~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~[the FSM].

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation~~;~~ or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation

themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

~~(b)~~ ~~with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and~~

(b) ~~(c)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

~~(a)~~ ~~The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ Not less than ■15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"). ~~In determining~~; and (ii) notice of the initial Protection Agreement Maximum, ~~the Province~~which may ~~have regard to (but not be bound by)~~not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is

inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) ~~Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.~~ Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~OPG~~[the FSM]

~~OPG~~[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario~~, is duly qualified to carry on its business in each jurisdiction in which it carries on business,~~ and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto~~ and to own its property and carry on its business as currently conducted~~.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of OPG enforceable against OPG~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of ~~OPG or~~ the Financing Entity or in the ability of ~~OPG or~~ the Financing Entity to perform ~~their respective~~its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result

in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) ~~to~~ elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to ~~OPG~~[the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to ~~OPG~~[the FSM] (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to ~~OPG, OPG~~[the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~ in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

**6.03 Settlement of Terms**

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

~~OPG~~[The FSM] shall cooperate with the Province and~~, as FSM,~~ will use commercially reasonable efforts to cause the Financing Entity to cooperate, and ~~each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.~~3~~

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~[the FSM~~, will~~] shall cause the Financing Entity to~~,~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

~~[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~[the FSM] under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by ~~OPG~~[the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~[the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[4] ~~Note:~~ The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**8.06 Confidentiality**~~[5]

**8.06** ~~**8.07**~~ **Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.~~

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS **TRUSTEE** ~~FOR [FINANCING ENTITY]~~OF FAIR HYDRO TRUST

By: _____
Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, **AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■]Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~[referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

~~**(form of Assumption Agreement to be attached, once settled)**~~

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:21:33 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/7 |
| Description | TOR_2528-#23239361-v7-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/10 |
| Description | TOR_2528-#23239361-v10-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 143 |
| Deletions | 146 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 305 |

**Draft: November 14, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

---

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may

from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

**1.17 Currency**

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

**1.18 References to Acts of the Financing Entity**

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

**1.19 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation, in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

---

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[5] in Satisfaction**

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[6]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

[6] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement. [7]

**4.03 Evidence of Satisfaction**

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

**5.01 Assignment and Subrogation**

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

**5.04 Representations and Warranties**

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured. [11]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

---

[9] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution,

delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Intentionally Deleted**

**9.08 Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

# EXHIBIT A
# FORM OF PAYMENT DEMAND

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~[1], BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

~~[1] "Trustee" is the "legal entity". Trustee itself should sign all primary documents to make "manager" delegation meaningful and to avoid invalidating the Trust as a "trust".~~

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~Ontario Power Generation Inc., as the Manager and~~Computershare Trust Company of Canada, in its capacity as ~~Manager~~trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust ~~settled by the FSM~~ under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity~~"), Ontario Power Generation Inc.~~ and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee ~~and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture~~, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The ~~FSM, as agent of the~~ Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] ~~See OFHPA, definition of~~Torys to confirm that Trust is a "financing entity"~~.~~ under OFHPA. Under definition, FSM to establish or cause to be established. ~~Needed for~~DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM[3] and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM[4] and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution

[3] ~~Need to confirm parties to the Process Agreement. OPG, acting as FSM, implies potential limitation on OPG's liability.~~

[4] ~~Deletion of the Trust as a party is unacceptable since would impact Province's rights against Trust's assets (e.g., as a subrogee).~~

therefor~~, [except in each case as referenced in the definition of Protection Event]~~[5];

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.[6]

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the

[5] ~~Covered in preamble, so delete.~~

[6] ~~Enforcement of the Limited Guarantee under this Agreement must be limited to enforcement by the Indenture Trustee on behalf of the Beneficiaries. The Trust Indenture should deal with the manner and limitations on the Indenture Trustee's actions with respect to enforcement.~~

statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.~~7~~

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation. ~~[To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.]~~[8]

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof.

~~7 There is no intention to provide a separate cause of action for individual Beneficiaries.~~

~~8 Explanation required. Indemnity is a separate cause of action and should not limit the Province's primary entitlements under this Agreement, opposite the Trust and the Indenture Trustee. If an override in favour of OPG is contemplated, that should be clearly set out and understood. This provision confuses concepts. In any event, the Trust is not a party to or a protected person under the indemnity.~~

To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall

begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, ~~the FSM as agent for~~ the Financing Entity Trustee ~~(in its capacity~~ as trustee of the Financing Entity~~). [NTD: Discuss whether the Financing Entity Trustee should~~

~~be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]~~[9].

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~[~~that would have been payable from Available

[9] ~~Otherwise validity of Trust obligations becomes questionable and opinion qualifications would become likely. Revert to Blakes language.~~

Collections had the Protection Event not occurred~~]~~[10]~~[owing]~~[11]3 from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable~~[~~, without Acceleration~~]~~[12]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation~~[~~, without Acceleration,~~]~~[13] in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~[~~that would have been payable from Available Collections had the Protection Event not occurred~~] [owing]~~ by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[14], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~[~~Protection Account~~]~~[15]4 ~~[5 Business Days prior to the fifteen day of each calendar month]~~[16] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event,~~

~~10 The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected. This language is an alternative to the simple drafting approach contemplated in the term sheet ("without acceleration"), and is more complex. It would also make the new "additional amount" (i.e., extra amounts up to the FAA) part of the Province's obligations, which has not been contemplated by the OFA to date and will need to be considered separately.~~

~~11 This would mean that the entire amount of the Notes would become payable, as a balloon. That is not the deal.~~

3 The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

~~12 This is a simpler and preferred formulation for the relevant concept. Also, consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

~~13 If alternative approach is preferred (as described above), this will also need to be modified.~~

~~14 Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

~~15 Addition of Protection Account step will require further consideration.~~ 4 Province needs to see how the Trust Indenture will be modified to address ~~this mechanically (i.e.,~~addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights~~)~~.

~~16 Delete. Province will pay on the date amounts would have otherwise been paid; not in advance.~~

~~and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account~~.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Intentionally Deleted.**

**2.03 Absence of Set-off**

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account~~175~~[5] in Satisfaction**

(a) ~~[~~On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is

~~175~~[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as ifon the basis that it wereis an Issuer Account.]

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[186]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

[18] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a[6] A corresponding provision should appear inneeds to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, to the effectso that the Beneficiaries will be deemed to beare bound by these applications and the agreement of the Indenture Trustee under this Agreement. Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

### 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

### 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[19] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of~~

~~[19] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.~~

Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;[20]

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(b) (d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG [and, for clarity, such certificate is to be provided in OPG'sby such officers in their capacity as officers of OPG acting in its capacity as FSM]][21]) and addressed to the Indenture Trustee and the Province[22], one Business Day, prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum[23]; and

ii. confirmation that [the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province]][confirming that the FSM

[20] Province needs this to be part of the adherence process opposite the indenture trustee. Since the PAM will be objectively determined and within the knowledge of the indenture trustee (as contemplated in para (c)), this should not raise practical constraints. This is analogous to current procedures undertaken in connection with the incurrence of provincial obligations, where the conditions to issuance involve specific affirmation that the issuance is within the prescribed borrowing limit.

[21] OPG's capacity in certifying is under consideration, having regard to the inherent limitations associated with actions undertaken as FSM.

[22] Certificate is intended as Province's closing due diligence and so needs to be addressed and delivered to Province. Otherwise Province will need to become directly involved in the closing process. Province is prepared to rely on OPG for this purpose to accommodate OPG's logistical concerns, but that does not mean that Province can be removed from the closing process altogether, without the benefit of these required affirmations.

[23] Province wants OPG to specifically confirm this at the time of closing, to support the Province's reliance on OPG for this critical purpose.

has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement][24]; and ; and

(c) (e) the Province has not provided a Suspension Notice to the Indenture Trustee[25], the FSM and the Financing Entity in accordance with the terms of this Agreement.[7]

(f)

(g) , confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(h) **[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, **[NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how**

[24] The intention was not to incorporate specific terms of the Process Agreement into the Protection Agreement, to avoid the need for investors, relying on the Protection Agreement, to be concerned about its contents. If there is a preference to hard-code the Process Agreement in the Protection Agreement, the Province will not object but further drafting considerations will arise.

[25] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province can cut-off future Limited Guarantees opposite the indenture trustee.

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

~~would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]~~ [26]

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) ~~(b)~~ The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

[26] ~~The idea is that if the Province steps in and becomes the obligor, it will get all of the underlying interests in the Trust's property (i.e., "interests … in respect of the Approved Obligation" = collateral). If this seems confusing, a parallel provision can be added to Art VI to address the step-in scenario specifically. Discussion of any concerns will be useful.~~

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## ~~5.03 Voting Rights under "Outstanding Notes"~~

~~**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[27]:**~~

~~(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**~~

~~(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Explanation required regarding why not restricting these voting rights to the Province may affect the marketability of the debt under this program.]**~~

## 5.03 ~~5.04~~ Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[28]~~8~~ ~~**[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**~~

[27] ~~This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).~~

[28] ~~General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE~~[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

## 5.04 ~~5.05~~ Representations and Warranties

The Province hereby represents and warrants[29] that:

(a) the ~~Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;~~execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance ~~by the Province~~ of this Agreement ~~and the completion of the transactions contemplated hereby do not and will~~by the Province do not result in ~~a~~the violation of any applicable law;

~~(c) all necessary action has been taken by the Province including under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder;~~ and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

# ARTICLE VI
# NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

## 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

## 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[309]

[29] ~~Province input required.~~

[309] Further details regarding obtaining of third party consents and rating agency approvals to be ~~considered~~provided by OPG.

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.~~31~~10 Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.~~32~~11]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

### 6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

~~31~~10 The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

~~32~~11 It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

### 7.04 Release of all Collateral[33]

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

### 7.05 Right to Notice and Attend Meetings[34]

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

**[Note: Any right to such matters will be the general rights of Specified Creditors[35] as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension NoticeSuspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) shall be provided by the FSM to the Province and the Indenture Trustee promptly following the occurrence of a Program Breach; upon the Province becoming aware of the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee upon the Province becoming aware of the occurrence of a Program Breach; and

[33] Before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs to know that the Collateral available to it as a subrogee/assignee will be protected. Province may have different interests than Specified Creditors, who may make concessions based on the protections under this Agreement being available to them in lieu of the Collateral.

[34] Again, before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs information that could affect its future rights as a subrogee/assignee. This is not a voting right; rather just a right to know what is going on. Why a problem?

[35] As explained above, Province needs rights prior to a Protection Event.

(b) ~~(c) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

## 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

## 8.03 Termination Notice

On ~~the earlier to occur of~~ (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").~~36~~12

## 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

# ARTICLE IX
# MISCELLANEOUS

## 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

~~36~~12 The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

## 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

### 9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 Intentionally Deleted

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. ~~**[NTD: Consider merging this section 9.08 with section 1.03.]**~~

### 9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[37] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of ~~[OPG]~~the FSM under the Process Agreement; or (b) any representation or warranty made by ~~[OPG]~~the FSM, any certification made by ~~[OPG]~~the FSM under the Process Agreement, or any certification made by ~~[OPG]~~the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM~~, the Administrative Agent~~ or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM~~, the Administrative Agent~~ or the Manager.][has the meaning ascribed thereto in the Process Agreement.][38]13

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

[37] ~~Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.~~

[38]13 Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

~~[**"Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.]~~[39]

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

~~[~~"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~]~~

~~[~~"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~]~~

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

~~[39] Confirm, vs use of a Protection Agreement.~~

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement. ~~**[NTD: To be discussed.]**~~

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

~~"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, ~~**[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**~~

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Wednesday, November 15, 2017 8:47:30 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/11 |
| Description | TOR_2528-#23239360-v11-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/12 |
| Description | TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 94 |
| Deletions | 207 |
| Moved from | 8 |
| Moved to | 8 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 317 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER~~]~~[1]]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] ~~Province~~OPG to consider ~~whether liability of OPG should be primary, or subject to the inherent limitations (e.g., duty/standard of care) implied by its role as FSM. Primary responsibility for the 'behind the scenes obligations' contemplated in this Process Agreement would be more meaningful to the extent that potential corporate liability promotes compliance~~ if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[2]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~[~~the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

~~[2] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, [except in each case as referenced in the definition of Protection Event]~~;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the ~~[FSM, as agent of the]~~[3] Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

[3] ~~Validity considerations if FSM effects primary agreements that in turn define the scope of its authority.~~

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

### 1.11 ~~1.10~~ Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.12 ~~1.11~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF [THE FSM]

### 2.01 Deliveries to the Province[4]

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) [The FSM] shall ~~[~~use commercially reasonable efforts to~~]~~[5] cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

[4] ~~Province to consider OPG's proposed deletion of fallback (non-PILs) access to tax information for the Trust.~~
[5] ~~Province to consider lower standard for compliance proposed by OPG, particularly (ii) to (v).~~

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

~~(C) consolidate or merge with or into any other Person;~~

(C) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~.

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or~~

~~(H) voluntarily dissolve or liquidate.~~

(b) [The ~~[~~FSM] shall ~~use commercially reasonable efforts to]~~[6]:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension

[6] ~~Province to consider lower standard for compliance proposed by OPG.~~

right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected~~; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) ~~[~~Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM~~ or the Financing Entity~~, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]~~7~~

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~the FSM~~OPG (or their respective designees, provided that such designees are also executive officers of ~~the FSM~~OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

~~7 Province to consider interaction of this Agreement with the OPG indemnity. To the extent that OPG is indemnified, the impact of OPG non-compliance is significantly reduced to the extent that liability considerations are relevant to OPG.~~

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; ~~[~~for clarity, Repayments ~~shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement].~~[8] under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

[8] ~~This requires further consideration. This could cut both ways to the extent non-CAD deals are done and the FX is hedged.~~

### 3.02 Acknowledgment

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d~~b) of the Change of Law Protection Agreement.

### 3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

### 3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation ~~[that would be adverse to the Issuer]~~[9], including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

~~(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and~~

~~[9] Province to consider if OPG should be empowered to make this qualitative judgment on behalf of the Province.~~

(xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) (c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum[10]

(a) [Not less than [■]15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which shall be based onmay not exceed the Initial Forecast.

(b) Not more than [■]10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement

[10] Province to consider OPG's proposal for Program Agreement Maximum. In effect, the discretion of the Province is removed and the limiter is tied directly to OPG's forecast (to be consistent with the financing plan required by the Act). This means that the Province has no independent escape hatch to limit its potential fiscal exposure under the Protection Agreement. As discussed, the actual exposure will depend on the determinations to use the IESO sale mechanics to fund shortfalls – in other words, if IESO were to not sell investment interests, then the corresponding funding obligations subject to the Protection Agreement would not arise. Note that the financing plan is almost entirely within OPG's discretion and is based on long-term estimates that assume maximum use of the IESO sale mechanics. Has the Province confirmed that committing to this arrangement for the term (30 years) of the OFHPA, without a limiter that is within the Province's control, will not result in a huge contingent liability being booked in the Province's accounts (i.e., maximum fundings for 30 years)? Has the Province determined whether there are other internal governance reasons to require an escape hatch for the purposes of its fiscal management purposes? Note that Protection Events are not all within the Government's control (e.g., *ultra vires* and invalidity issues).

~~may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and~~may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG ~~will~~shall discuss ~~and~~any discrepancies with the Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.~~]~~

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum ~~based on~~, which may not exceed such Forecast.

(d) Not more than ~~[■]~~10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province ~~shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will~~may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss ~~and~~any discrepancies with the Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes

of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall [use commercially reasonable efforts to]~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

~~[OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.~~

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.~~]~~[11]

(d) ~~(c)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation ~~of [the Financing Entity enforceable against the Financing Entity]~~[12] in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

[11] ~~Province to consider carve back of OPG reps and liability issues with role as FSM only.~~
[12] ~~Focus was on OPG. They shifted it to the Trust.~~

(e) ~~(d)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

~~(e) [There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.~~

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.~~]~~[13]

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) ~~[~~Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.~~]~~[14]

(i) ~~[~~No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in

[13] ~~Province to consider carve back of OPG reps and liability issues with role as FSM only.~~
[14] ~~Deleted by OPG. Province to consider.~~

connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.][15]

**5.02 Representations and Warranties of the Province[16]**

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(a) (b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;by the Province have been authorized by all necessary action on the part of the Province;

(b) (c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution andthe execution, delivery and performance of this Agreement by the Province and the performance by the Province of its obligations hereunderdo not result in the violation of any applicable law; and

(c) (d) this Agreement has been duly authorized, executed and delivered on behalf ofby the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## ELECTION[17]2 TO ASSUME APPROVED OBLIGATIONS[18]

**6.01 Election by the Province**

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and

[15] Deleted by OPG. Province to consider.

[16] Province to consider OPG's request for these representations. Does the Province make these sorts of representations in a commercial agreement? To the extent that the Province makes a statement (such as 5.02(d)) that is not caveated by the usual considerations applicable to a Crown obligation, the parallel rep requested in the Protection Agreement could be held out as a misstatement and itself provoke a "Protection Event" – suggesting that these sorts of "nice to have" reps from the Province will be more work (and potentially dangerous) than they are worth.

[17] Province to consider2 OPG's proposal to move Art VI to the Protection Agreement. The approach taken originally was motivated by the desire is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee), but should otherwise be fine in principle. OPG to advise if that approach is preferred.

[18] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured ~~is~~ attached as Exhibit E to the Change of Law Protection Agreement.[19]~~3~~

[19] ~~Note to Province: A~~[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured ~~is required. It is impractical to have an assumption agreement for each type of Obligation Secured. Province: We can~~. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations. ~~Ultimately, this is a mechanics point.~~

### 6.03 Settlement of Terms

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

### 6.04 Cooperation to Implement the Assignment and Assumption

[The FSM] shall cooperate with the Province and will ~~[~~use commercially reasonable efforts to~~]~~[20] cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.~~21~~

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM~~ will use commercially reasonable efforts to~~] shall cause the Financing Entity to~~, [use commercially reasonably efforts to]~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.~~22~~[4]

~~20 Province to consider scope of commitment.~~

~~21 Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

~~22 Note:~~ [4]The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. ~~[NTD: The form of Assumption Agreement shall~~The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement~~ (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We~~, The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to ~~otherwise~~ address ~~your comment~~this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured ~~pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows~~on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.~~]~~

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, ~~[~~which continues for ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such default or breach~~]~~[23];

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made ~~[~~and, if curable, is not cured within ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such misrepresentation~~]~~[24]; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. ~~**[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**~~[25]

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic

~~[23] Province to consider proposed 60 day cure period. This is an extraordinary suggestion and if accepted would greatly weaken the Province's ability to address a problem in the unlikely event one comes up with OPG.~~
~~[24] Extraordinary suggestion by OPG – weakens Province.~~
~~[25] This should be considered. If true, it is unclear why that should make a difference – in terms of enabling the Province to cut off its forward obligations in the event of a fundamental problem or circumstance (change of control) that leads to a replacement of OPG as FSM.~~

communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**8.06 Intentionally Deleted**[26]~~

**8.06** ~~**8.07**~~ **Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

~~[26] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]|[Province: That circle should still be protected through carve-outs from ordinary non-disclosure terms and conditions. Province to consider if confidentiality is a concern. It was included as a consideration in the term sheet.]**~~

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [~~SOLELY~~][27] AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]**

By: _____

Name:
Title:

By: _____

Name:
Title:

[27] ~~Unusual. OPG is trying to incorporate inherent limitations applicable to an agency relationship.~~

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

Document comparison by Workshare Compare on Wednesday, November 15, 2017 8:46:47 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/9 |
| Description | TOR_2528-#23239361-v9-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/10 |
| Description | TOR_2528-#23239361-v10-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 145 |
| Deletions | 167 |
| Moved from | 7 |
| Moved to | 7 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 326 |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Cc:** | Tom McKinlay (MAG) |
| **Subject:** | RE: Discussion of OPG's Proposed Adherence Terms \| OFA, OPCD, MOF, Legal Counsel |
| **Date:** | Thursday, October 26, 2017 9:03:29 AM |
| **Attachments:** | 12917730-v1-Questions (Adherence Conditions).docx |

Good morning,

Several OFA staff have a hard stop today at 10:30am, so I'd like to suggest that we try to move through the questions as quickly as possible to finish today's meeting on time. And thank you to Stephen and Toby for preparing the attached to help focus our attention. Much appreciated.

Anna

-----Original Appointment-----
**From:** Anna Strathy
**Sent:** Wednesday, October 25, 2017 3:49 PM
**To:** Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Hresa Gavaris; John Psinas
**Cc:** McKinlay, Tom (MAG)
**Subject:** Discussion of OPG's Proposed Adherence Terms | OFA, OPCD, MOF, Legal Counsel
**When:** Thursday, October 26, 2017 9:30 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to moderate

or

Please call Hresa at 5-8002 upon arrival

<< File: 12917730-v1-Questions (Adherence Conditions).docx >>

**Confidential legal advice subject to solicitor-client privilege**

October 23, 2017

**Questions for MOE and OFA to consider regarding OPG's Proposed Adherence Terms**

A. Scope of Province's Obligations under the Change of Law Protection Agreement (**CLPA**)

1. On a Protection Event, should the Province become responsible for the payment of taxes (if any) owing by the Financing Entity?

2. On a Protection Event, should the Province become liable to pay amounts owing by the Financing Entity to OPG (e.g., FSM fees and expenses)?

3. On a Protection Event, should all available funds (e.g., funds accumulated in sinking funds) be immediately applied to reduce the amount that the Province would be liable for under the CLPA?

4. Should the Province set a "Protection Agreement Maximum" (previously called the "Program Maximum") that measures and relates only to "principal amounts"? In other words, should the limitation be tied only to principal obligations, while the Province's actual obligations would automatically extend, without specific quantum limits, to the other payment obligations under "funding obligations" (e.g., interest, swaps, standby liquidity commitment fees, servicer fees and expenses)?

5. Is the Province comfortable guaranteeing contingent obligations (e.g., indemnity obligations) of the Financing Entity? If so, should the Province require that such contingent obligations be "capped" within the funding obligation itself or should the exposure of the Province be otherwise limited under the CLPA?

6. Should the Province be required to deposit funds to meet sinking fund or collateral deposits (i.e., deposit obligations incorporated in the financing structure on the basis that the "clean energy" cash flows will service the obligations, rather than the Province), notwithstanding that the Province would have become primarily liable for payment obligations under the CLPA?

B. Adhesion

7. Is the Province okay splitting the maximum exposure limitations and "process-related" matters (see below) into a separate agreement - away from the terms of the agreement under which the Province's payment obligations would bind the Province opposite the Indenture Trustee? OPG proposes this in order to keep the optics of the CLPA as simple and straightforward as possible. In other words, is the Province prepared to leave all of the important details regarding what OPG is supposed to do before incurring an obligation that binds the Province to a side agreement with OPG, that is opaque to the Indenture Trustee and Underwriters at the time a funding obligation is incurred and not requiring any third party to have notice or regard to the Province's requirements?

8. OPG proposes that delivery of an officers' certificate to a third party, in OPG's capacity as FSM, will in and of itself bind the Province under the CLPA. That certificate would simply indicate that the Province is bound under the CLPA with respect to the specified funding obligation. It would not be addressed to the Province (although a pre-closing certificate is contemplated to be delivered to the Province) and the "Protection Agreement Maximum" concept would not be incorporated as a specific condition (other

than to the extent that OPG is bound to the Province under the side agreement with the Province). Is this acceptable to the Province? Does this raise any governance/authority issues for the Province (e.g., limit on incurrence needing to be specifically confirmed at closing? scope of permitted delegation to bind? FAA compliance?)

C. "Protection Agreement Maximum" (formerly "Program Maximum" (**PAM**)

9. OPG proposes that the PAM will be determined based on a mechanical calculation and without any real discretion on the part of the Province to set or object to the PAM. Is this acceptable to the Province?

10. OPG's proposed mechanical process to determine PAM would be based on OPG's 24 month forecast (estimate) of payments to be made by the Financing Entity. So long as that forecast (and any refresh) is consistent with the "Financing Plan" (also prepared by OPG) and is "reasonably expected to align with the fair allocation amount", the Province will be required to accept the PAM based on OPG's forecast – i.e., no discretion to reject or modify the aggregate amount of the Province's commitment initially or from time to time. Is the Province prepared to tie its CLPA obligation automatically to the operation of the OFHPA in this way, without review and with perpetual effect?

11. Is the proposed mechanical link to the OFHPA calculations consistent with the OIC or other governance requirements applicable to the Province's authority to approve the CLPA?

12. Is the initial 24 month forecast period appropriate (e.g., 2.5B x 2 – large)? Is OPG's proposed refresh of the PAM (mechanically tied to the new forecast), 9 to 12 months prior to the end of the 24 month forecast period, appropriate?

D. "Process-Related" Matters

13. Assuming the Province is okay with the arrangements described in question 7, above, we would envision a mechanism where the Province could give the Indenture Trustee notice of a breach (if known) by OPG of the PAM or process-related side agreement, and that such a notice would have the effect of cutting off the application of the CLPA for any future incurrences unless the Province further agrees otherwise. Does the Province agree that this sort of failsafe is essential? Note that OPG's suggestion has been that no pre-incurrence non-adherence/failsafe provision be provided, in order to allow the Province to provide notice that the CLPA will not apply to a pending/proposed incurrence.

14. Does the Province need to contemplate other scenarios where the CLPA would become ineffective in respect of future incurrences, such as:

    a. an OPG change of control

    b. a policy-based determination by a future government

    c. an unanticipated circumstance, such as the incurrence by the Financing Entity of assessed tax liabilities, indemnity payments, "increased costs", rating downgrades, offering disclosure-based claims, defaults under the program,

insolvency of a major counterparty (e.g., swap counterparty or services provider), etc.

d. a discretionary circumstance where the Province decides it no longer wishes to be liable under the CLPA?

We expect that OPG would push back so that any suspension of new obligations by the Province would not hamper OPG's ability to complete an anticipated/needed refinancing.

15. Does the Province have any reservations about letting OPG at any time provide a binding certificate to third parties regarding adherence, which would be determinative of the Province's obligations. What conditions for this sort of certificate would make sense (e.g., preview and consent by the Province)? Does this proposal raise any governance/authority issues for the Province (e.g., scope of delegation; FAA compliance)?

16. If the Province is prepared to be liable for taxes owing by the Financing Entity (see question 1, above), what oversight, assurances, documentation and reporting regarding the potential for entity-level taxes should the Province require (if any)?

17. OPG is proposing that the Province will receive a certificate prior to the Financing Entity incurring a funding obligation, that sets out "the material terms of the funding obligations pertaining to the principal amount, pricing and third party fees". Is that a sufficient amount of detail, or would the Province like to specifically itemize its information expectations, to cover things such as:

    a. details respecting any principal obligation, such as:

        i. the amount, timing and conditions of repayments (including any redemption or extension rights)

        ii. the basis for OPG's expectations regarding the availability of any related refinancings

        iii. any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the principal obligation

        iv. the rating (if any) contemplated to be attributed to the principal repayment of the funding obligation

        v. details respecting any redemption rights, including the nature and conditions applicable to any exercise and OPG's expected basis for determining whether or not to exercise a redemption right, option or privilege;

    b. details respecting interest obligations, such as:

        i. the anticipated interest or discount rate or rates (including default rates)

        ii. the timing/frequency/conditions of coupon payments

iii. any required deposits to be made into a finance reserve account or supplemental account

iv. the availability of any funding rebates in order to provide for payment of interest

v. the rating (if any) contemplated to be attributed to the interest obligation;

c. details respecting any hedging obligation (e.g., interest or FX swaps, options or other derivatives), such as:

i. the name of the counterparty and credit details

ii. the credit ratings (if any) of the payor(s)

iii. the risks sought to be mitigated by the derivative

iv. anticipated circumstances (if any) in which the derivative may not achieve such mitigation or be subject to early termination

v. whether collateral posting requirements will apply;

d. details respecting other funding obligations, such as:

i. the payee

ii. the timing and any conditions of payments

iii. any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations

iv. in the case of a contingent obligation (e.g., indemnities), the nature and extent of any contingency affecting the payment obligation, the circumstances in which a payment obligation may arise and any specified maximum claim amount

e. assuming that the Province would be liable for capital, reserve or supplementary account deposit obligations (see question 6, above), details respecting the schedule for such deposits and the conditions for the application of such amounts to pay such amounts and the related priorities for application.

18. OPG (and presumably OPG's accountants) is contemplating that the Province will be provided transaction documentation "in substantially final form" and that the Province will not be entitled to provide input "other than in its capacity as obligor under the [CLPA]". In other words, assuming that the CLPA is signed in advance, the Province will have no real opportunity to comment on the forms of transaction documents to be used, and will

have a limited opportunity to "not accept" [1] the documentation. Can the Province live with these limitations?

19. The proposed OPG certificate (pre-incurrence) would include an attestation by OPG regarding the use of pre-reviewed documentation. The test for conformity of the to-be-used documentation, compared to the pre-reviewed documentation, would focus only on whether "the covenants of the Financing Entity are no more onerous in any material respect" and that the "events of default" are consistent "in all material respects". Is the limited scope of this conformity test acceptable, or should it be broadened and cover specific items such as:

    a. no differences in the timing of or circumstances under which payments are or may become due (for example, as a result of any termination, wind-up, liquidation or realization)

    b. no differences that could affect the Province's rights of subrogation or interests as a subrogee

    c. with respect to the anticipated form of series specific documents (as opposed to the upfront terms of program-wide "master" documents), confirming that the variable terms set forth in the proposed documents are as reasonably contemplated in the reviewed forms, having regard to such matters as:

        i. the type of instrument to be issued (i.e., debt (bullet vs. amortizing), equity-linked, pass-through instruments, etc.)

        ii. the scope of the related obligations (e.g., redemption or extension features or other optionality)

        iii. the extent of the related obligations (e.g., limited recourse features, limitations on indemnities, etc.)

        iv. the timing, conditions and circumstances in which payment obligations may arise,

    but making it clear that conformity would not include a comparison to the particular financial terms, rates, levels and parameters of the obligations other than if the reviewed forms specify specific requirements, limitations or parameters.

20. How much time is sufficient for the Province:

    a. to do an initial review of the main transaction documentation (including forms of series-specific documents), which would set the acceptable pattern for future

---

[1] Note that the proposed OPG language is not crystal clear that the Province can reject the reviewed documentation, which we expect is merely drafting, but that will need to be confirmed assuming the Province wishes to work within the OPG/Tory mark-up.

issuances? The proposal is 15 BDs, although that does not seem to make sense given that OPG proposes that the Province must confirm acceptance of the terms within 15 BDs of receipt of the documentation

b. to do a review of any changes to the main transaction documentation (including forms of series-specific documents), which would reset the acceptable pattern for future issuances? The proposal is to receive proposed amendments at least 15 BDs prior to first use, and the Province would confirm acceptance of the terms within 15 BDs of receipt of the documentation

c. to review applicable details of a proposed funding obligation in advance of an incurrence (proposal is 10BDs)?

21. What other items should be incorporated into the timeline from the Province's perspective?

E. Information, Reporting and Other Covenants

22. OPG proposes to provide the Province with an applicable "Financing Plan" only after an incurrence. Does the Province need to see this document as it is issued and changed, rather than only after the time of an incurrence?

23. OPG proposes to provide the Province with any actual offering/disclosure documents only after it is used. Does the Province need to have input into offering/disclosure document before use or dissemination (e.g., the description of the CLPA)?

24. OPG has limited its negative covenant on elections by the Financing Entity following a Protection Event to actions that would accelerate obligations. Should this be broader to cover extensions or other consensual changes that could affect the obligations (e.g., creditor concessions).

F. Parties

25. Will it be sufficient for the CLPA (and any procedural side-letter) to be signed by OPG, acting solely in its capacity as "financial services manager" (i.e., with OPG's liability being limited by the terms of the related management or administrative agreement)? How does this interplay with any other indemnities or exculpatory provisions that the Province is anticipating for OPG (corporate) and its officers?

26. Who from OPG should sign the officer's certificate? The OPG proposal is 2 "executive officers".

27. OPG proposes that a failure to comply with the PAM or "approval process" will not result in any breach. Assuming that OPG is in fact proposing that its failure would have no consequences, including as between the Province and OPG whatsoever, are the process aspects of the OPG proposal even meaningful to the Province?

**From:** Anna Strathy
**To:** Mike Manning; James Devine; Ken Kandeepan; Carlos Yep; John Kim
**Subject:** RE: Draft Fees Regulation
**Date:** Wednesday, September 27, 2017 3:47:11 PM

---

Hi All,
I briefed Gadi on our call discussion this morning – he's comfortable with the proposed approach of going back at 5, with the caveats that it is at the higher end of market norms and should be evaluated by an independent expert within the first year of the program.
That said, he was also under the impression that the number/fees had already been agreed to. Had something changed between a few weeks ago and now? I'm sure Ken/Mike could clarify tomorrow – feel free to pop by his office.
Thanks, Anna

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?

- Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**From:** John Kim
**To:** Ken Kandeepan; Mike Manning; James Devine
**Cc:** Carlos Yep
**Subject:** RE: Draft Fees Regulation
**Date:** Wednesday, September 27, 2017 3:43:00 PM

---

Some minor comments. All under Base Fee section.
I'd convey that the compromise of 5bps is still generous more explicitly. I think that was Jim's comment. The rest of the comments imply it but could be useful. "10bps is high. We would recommend a compromise of 5bps to start, which we feel is still generous and to be reviewed in a year."
Where it says "This is consistent with the actual fees paid by OPG and the Province…", consider adding "also" to imply that it is referring to the 1-2bps for passive fixed income funds.
"From a significant economics of the financing entity,…" I wasn't quite sure what this is trying to say. Could be just me.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 27, 2017 2:54 PM
**To:** Mike Manning ; James Devine ; John Kim
**Cc:** Carlos Yep
**Subject:** RE: Draft Fees Regulation
Hi Mike at al
Pls see the draft email back to Scott Nelms, all credit to Carlos. Mike you may want to send it to Scott with cc's to the usual suspects, if you have any logistical issues, I am happy to do so, I will wait until 4.30 and if I don't hear from you will send it out.
Thanks
Ken k

---

**From:** Carlos Yep
**Sent:** Wednesday, September 27, 2017 2:43 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High
Ken
Here are some thoughts …
Base Fee: 10bps is high. We recommend a compromise of 5bps to be reviewed in a year.
As background, market investment manager fees are 1-2bps for passive fixed income funds.
This is consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. The index funds require constant rebalancing by the investment manager.
From a significant economics of the financing entity, OPG is getting 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%. Ie. For each $2.5B of Global Asset X 44% equity injection would contribute $55million net revenue to OPG for each of 10 years and would be a reduced amounts for the following 30 years as the Global Asset is paid down.
Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"
That means deleting column 1 and item 2 of the table.
Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As

suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

---

**From:** Mike Manning
**Sent:** Tuesday, September 26, 2017 1:53 PM
**To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High

I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.
Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years

regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Mike Manning; James Devine; John Kim |
| **Cc:** | Carlos Yep |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Wednesday, September 27, 2017 2:53:51 PM |

Hi Mike at al
Pls see the draft email back to Scott Nelms, all credit to Carlos. Mike you may want to send it to Scott with cc's to the usual suspects, if you have any logistical issues, I am happy to do so, I will wait until 4.30 and if I don't hear from you will send it out.
Thanks
Ken k

**From:** Carlos Yep
**Sent:** Wednesday, September 27, 2017 2:43 PM
**To:** Ken Kandeepan
**Subject:** FW: Draft Fees Regulation
**Importance:** High

Ken
Here are some thoughts …
Base Fee: 10bps is high. We recommend a compromise of 5bps to be reviewed in a year.
As background, market investment manager fees are 1-2bps for passive fixed income funds.
This is consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. The index funds require constant rebalancing by the investment manager.
From a significant economics of the financing entity, OPG is getting 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%.
Ie. For each $2.5B of Global Asset X 44% equity injection would contribute $55million net revenue to OPG for each of 10 years and would be a reduced amounts for the following 30 years as the Global Asset is paid down.
Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"
That means deleting column 1 and item 2 of the table.
Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

**From:** Mike Manning
**Sent:** Tuesday, September 26, 2017 1:53 PM
**To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High

I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.
Mike

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High

Hi Gadi,

I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**From:** Mike Manning
**To:** Scott Nelms (ENERGY)
**Subject:** RE: Draft Fees Regulation
**Date:** Tuesday, September 26, 2017 3:59:28 PM

---

I think we'd want a very light touch. Talking to John Lee a couple of weeks ago, he mentioned maybe an initial opinion from the OFA and then have an independent consultant look at it a bit down the road. Let's discuss, hopefully tomorrow. In terms of fixed fees, Ken Hartwick was discussing a couple of weeks ago the need for the fees to be significant and he backed out 10 basis points to arrive at a material number over a number of years which would be required to keep the accountants on side. Is that your recall as well? If that is the case, then will be difficult to lower the fixed fees. Aside from that they look fairly high.

Thanks, Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:46 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Ok, right. I think this draft suggests OEB has an oversight role. I don't think that makes sense. Do you mind considering whether you would be comfortable with OFA replacing OEB in the regulation (it is very light touch I think focused on reviewing comparators)?

---

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** September 26, 2017 3:35 PM
**To:** Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>
**Subject:** RE: Draft Fees Regulation

Hi Scott:
We agreed to look at it and notionally it seemed ok, but would like to take a closer look at the most recent version.
Thanks, Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi Mike,

I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think

something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.

Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>
**Cc:** Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.
>
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>  - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?

- Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

<Blackline_24180663v1 - 24180663v3.pdf>

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Nelms, Scott (MOF) |
| **To:** | Mike Manning |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 3:46:38 PM |

---

Ok, right. I think this draft suggests OEB has an oversight role. I don't think that makes sense. Do you mind considering whether you would be comfortable with OFA replacing OEB in the regulation (it is very light touch I think focused on reviewing comparators)?

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** September 26, 2017 3:35 PM
**To:** Nelms, Scott (MOF)
**Subject:** RE: Draft Fees Regulation
Hi Scott:
We agreed to look at it and notionally it seemed ok, but would like to take a closer look at the most recent version.
Thanks, Mike

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation
Hi Mike,
I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.
Thanks,
Scott

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>
**Cc:** Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>
**Subject:** Re: Draft Fees Regulation
Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one

year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?

- The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
- It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Scott Nelms (ENERGY) |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 3:34:53 PM |

Hi Scott:
We agreed to look at it and notionally it seemed ok, but would like to take a closer look at the most recent version.
Thanks, Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 3:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Draft Fees Regulation

Hi Mike,

I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.

Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>
**Cc:** Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
>
> I hope NYC is going well and you are finding air conditioning.

We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
  - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
  - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
  - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

<Blackline_24180663v1 - 24180663v3.pdf>

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Nelms, Scott (MOF)
**To:** Mike Manning
**Subject:** RE: Draft Fees Regulation
**Date:** Tuesday, September 26, 2017 3:01:59 PM

---

Hi Mike,
I have been thinking about this a bit more as I haven't been tied into this process for a few weeks. Do you recall a conversation prior to one of our Thursday meetings where we agreed OFA would take on the review role for OPG fees? We had an issue that OEB involvement would not meet OPG's requirements, so OFA involvement was seen as a reasonable compromise. If that is accurate, I think something has been lost in translation in this draft of the regulation. I'm circling back with legal and energy folks to confirm their view as well.
Thanks,
Scott

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation
Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
>   - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
> - On timing, the draft reg currently contemplates a fee application by OPG every

two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Nelms, Scott (MOF) |
| **To:** | Gadi Mayman |
| **Cc:** | Steen Hume (CAB); Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 2:23:42 PM |

---

Thanks Gadi

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** September 26, 2017 2:15 PM
**To:** Nelms, Scott (MOF)
**Cc:** Hume, Steen (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA)
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
>   - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
> - On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).
>
> In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,
Scott

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Gadi Mayman |
| **Cc:** | Anna Strathy; Ronald Kwan; Mike Manning |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Tuesday, September 26, 2017 2:10:32 PM |

Not entirely, Mike is scheduling an internal meeting for most likely tomorrow so that we can provide consolidated comments.
Thanks
Ken K

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:09 PM
**To:** Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** Fwd: Draft Fees Regulation

Are all of you OK with this? If you are, I'm fine, too, but I'm having trouble reading it with all of the markups and black lines.
Gadi

Begin forwarded message:

> **From:** "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>
> **Date:** September 26, 2017 at 12:18:07 PM EDT
> **To:** "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>
> **Cc:** "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
> **Subject: Draft Fees Regulation**
>
> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a

pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?

- Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Scott Nelms (ENERGY) |
| **Cc:** | Steen Hume (CAB); Mike Manning; Ronald Kwan; Gadi Mayman; Carlos Yep; James Devine; John Kim; Anna Strathy |
| **Subject:** | RE: Draft Fees Regulation |
| **Date:** | Wednesday, September 27, 2017 4:48:04 PM |

Hi Scott

As per Gadi's email yesterday, pls find below our consolidated comments. Pls feel free to contact Mike or me if you have any questions.

Base Fee:

10bps is high. We recommend a compromise of 5bps to be reviewed in a year. As background, market investment manager fees are 1-2bps for passive fixed income funds.

This is also consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. Note that the index funds require constant rebalancing by the investment manager.

OPG is receiving 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%, I.e. For each $2.5B of Global Asset X 44% equity injection would contribute, $55 million net revenue to OPG for each of the 10 years and would continue over repayment period albeit as a reduced amount as the Global Asset is paid down.

Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"

That means deleting column 1 and item 2 of the table.

Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or as a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

Thanks

Ken k

---

**From:** Gadi Mayman
**Sent:** Tuesday, September 26, 2017 2:15 PM
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.
Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some

elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
    - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
    - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
    - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
    - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
- On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; James Devine; Carlos Yep; Malle Hanslep (MOF); WONG Leslie -LAWDIV; LADAK Lubna -TREASURY; Tobias P. Whitfield (MOF); John Psinas; John Kim; Ronald Kwan; Tom McKinlay (MAG); Anna Strathy; Mark Donaldson (MOF); "ASHBOURNE, STEPHEN"; Ramchandani, Rima; MAUTI John -FIN & C CTRL |
| **Subject:** | RE: EXTERNAL – FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement |
| **Date:** | Friday, November 03, 2017 9:18:45 AM |

Thanks.
I will let you know if a meeting will be necessary or whether we will just provide a blackline after we have conducted our review.

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** Friday, November 03, 2017 8:53 AM
**To:** LEE John -TREASURY
**Cc:** Mike Manning ; James Devine ; Carlos Yep ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF) ; John Psinas ; John Kim ; Ronald Kwan ; Tom McKinlay (MAG) ; Anna Strathy ; Mark Donaldson (MOF) ; 'ASHBOURNE, STEPHEN'
**Subject:** EXTERNAL – FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi John
As discussed previously pls find attached the Protection Agreement and the accompanying process document which have been forwarded to Torys by Steven Ashbourne last evening. Pls provide us with your consolidated comments including feedback from the dealers, E&Y and where appropriate the Rating Agency.
Based on the timeline that we discussed on Tuesday, your comments will allow decision makers such as Gadi to provide guidance next week on resolving any material issues that are identified in your response.
Thanks
Ken k

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | "LEE John -TREASURY" |
| **Cc:** | Mike Manning; James Devine; Carlos Yep; Malle Hanslep (MOF); WONG Leslie -LAWDIV; LADAK Lubna -TREASURY; Tobias P. Whitfield (MOF); John Psinas; John Kim; Ronald Kwan; Tom McKinlay (MAG); Anna Strathy; Mark Donaldson (MOF); "ASHBOURNE, STEPHEN"; Ramchandani, Rima; MAUTI John -FIN & C CTRL |
| **Subject:** | RE: EXTERNAL – FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement |
| **Date:** | Friday, November 03, 2017 9:55:41 AM |
| **Attachments:** | 23239360-v9-CLPA - Protection Agreement.DOCX<br>23239361-v7-CLPA - Process Agreement.DOCX |

---

Thanks John, as our counsel have pointed out, my previous email attached the blackline version of the two documents, for ease of review and in order to distinguish your responses from our previous edits, I am attaching the clean version, pls use this for comments and edits.
Thanks
Ken k

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Friday, November 03, 2017 9:18 AM
**To:** Ken Kandeepan
**Cc:** Mike Manning ; James Devine ; Carlos Yep ; Malle Hanslep (MOF) ; WONG Leslie -LAWDIV ; LADAK Lubna -TREASURY ; Tobias P. Whitfield (MOF) ; John Psinas ; John Kim ; Ronald Kwan ; Tom McKinlay (MAG) ; Anna Strathy ; Mark Donaldson (MOF) ; 'ASHBOURNE, STEPHEN' ; Ramchandani, Rima ; MAUTI John -FIN & C CTRL
**Subject:** RE: EXTERNAL – FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement
Thanks.
I will let you know if a meeting will be necessary or whether we will just provide a blackline after we have conducted our review.

---

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** Friday, November 03, 2017 8:53 AM
**To:** LEE John -TREASURY <john.s.lee@opg.com>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** EXTERNAL – FW: Circulation of drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Hi John
As discussed previously pls find attached the Protection Agreement and the accompanying process document which have been forwarded to Torys by Steven Ashbourne last evening. Pls provide us with your consolidated comments including feedback from the dealers, E&Y and where appropriate the Rating Agency.
Based on the timeline that we discussed on Tuesday, your comments will allow decision makers such as Gadi to provide guidance next week on resolving any material issues that are identified in your response.
Thanks
Ken k

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved

Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated

Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under

the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY

HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

---

[1] Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[2] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Collection Account in Satisfaction**

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[5].

---

[3] Under consideration.

[4] This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.

[5] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement.

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

**2.08 Continuance of the Limited Guarantee**

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03].

**2.09 Modifications of Approved Obligations**

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

**3.01 The Indenture Trustee**

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

**3.02 Acceptance of Trusts**

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[6] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things,

[6] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.

**4.03 Evidence of Satisfaction**

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

**5.01 Assignment and Subrogation**

Upon paying an amount in respect of an Approved Obligation:

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[8]

[7] This concept needs to be reflected in the Trust Indenture.

[8] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[9] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

**7.02 Not Responsible for Recitals or Issuance of Notes**

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

**7.03 Representations and Covenants of the Indenture Trustee**

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM or the Province to the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

### 8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

**9.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for [Financing Entity]
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.08 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

## SCHEDULE A
## DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, any certification made by OPG under the Process Agreement, or any certification made by OPG in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

---

[10] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] Note: To be confirmed if required.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

[12]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and (b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the Financing Entity's receipt of amounts in respect of its Investment Interest and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

**Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM established the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act, have been done.

---

[1] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

### 2.01 Deliveries to the Province

(a) Not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.

(c) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional of replacement Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]

### 2.02 Covenants

(a) OPG shall, as the FSM, cause the Financing Entity to:

[2] Note: The tax documents to be provided to the Province are under consideration.

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(c) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast setting out OPG's expectations regarding the aggregate maximum amount of

Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction

in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or

instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate, and each shall use its best efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity, permitting

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement);

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made; or

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**[5]

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] Note: To be confirmed if required.

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]

["**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any

other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Subject:** RE: EXTERNAL – Fair Hydro Plan Timeline Update
**Date:** Thursday, October 19, 2017 2:26:19 PM

---

Thanks Mike.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** October 19, 2017 2:14 PM
**To:** Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF)
**Cc:** Devine, James (OFA); Yep, Carlos (OFA)
**Subject:** FW: EXTERNAL – Fair Hydro Plan Timeline Update

Hello everyone:

Not sure this helps too much, but passing along for your information.

Regards, Mike

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Thursday, October 19, 2017 2:07 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>
**Subject:** FW: EXTERNAL – Fair Hydro Plan Timeline Update

Mike:

Further to your request, attached is the current draft schedule.

John

**From:** Stoddart, Jesse - Debt Capital Markets [mailto:Jesse.Stoddart@cibc.com]
**Sent:** Wednesday, October 18, 2017 8:16 PM
**To:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; LIU Sheen -TREASURY <sheen.liu@opg.com>; 'pmilligan@osler.com' <pmilligan@osler.com>; 'rsebastiano@osler.com' <rsebastiano@osler.com>; 'rramchandani@torys.com' <rramchandani@torys.com>; 'mfeldman@torys.com' <mfeldman@torys.com>
**Cc:** Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>
**Subject:** EXTERNAL – Fair Hydro Plan Timeline Update

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Please see attached the most updated version of the Fair Hydro Plan master timeline. Please focus on the short term key deliverables page, and let us know if you have any comments.

Thanks,

Jesse

**Jesse Stoddart** | Analyst | Debt Capital Markets | CIBC Capital Markets | CIBC World Markets Inc.

161 Bay Street 5th Floor, Toronto ON M5J 2S8 | Tel: 416 594-7464 | Cell: 647 217-6471 | jesse.stoddart@cibc.com

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete this message including any attachments, without reading it or making a copy.

You are receiving this email because our records show that you have a relationship with one or more of the CIBC Capital Markets lines of business of Canadian Imperial Bank of Commerce (CIBC) or CIBC World Markets Inc., which includes Investment and Corporate Banking and Global Markets. If you believe you are receiving this message in error or you no longer wish to receive electronic messages from us, you may unsubscribe at any time. If you experience challenges with the unsubscribe link, reply to this email with the Subject Line "Unsubscribe" and Cc: Mailbox.CASLUnsubscribe@cibc.com. Please note that by selecting unsubscribe, we will only be able to send you emails that are required or permitted by law. Our mailing address is : CIBC CASL Unsubscribe, 161 Bay St, 9th Floor, Toronto, Ontario, M5J 2W5

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | "LEE John -TREASURY" |
| **Cc:** | Scott Nelms (ENERGY); WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY; Gadi Mayman; Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Subject:** | RE: EXTERNAL – Final Term Sheet - Provincial Protection Agreement |
| **Date:** | Wednesday, September 27, 2017 11:47:17 AM |

Hi John,
Correct, the version from September 18 remains the most current.
It was approved with no changes by TB/MBC on Monday and referred to Cabinet for approval today. We should know the outcome of the Cabinet discussion this afternoon.
Thanks, Anna

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Wednesday, September 27, 2017 11:37 AM
**To:** Anna Strathy
**Cc:** Scott Nelms (ENERGY) ; WONG Leslie -LAWDIV ; RYFA Ken -TREASURY ; HAHN PARKER Janet -TREASURY
**Subject:** FW: EXTERNAL – Final Term Sheet - Provincial Protection Agreement
Anna:
I believe the final term sheet has been circulate to Province committee/TB yesterday for approval/review yesterday.
Can you confirm that there has been no further changes as a result of that meeting and the version we have from Monday the 18th is still the "final"
We have been asked to provide a copy to our Oversight committee and I wanted to make sure that the 18th is the "final"
Thanks
John

**From:** WONG Leslie -LAWDIV
**Sent:** Wednesday, September 27, 2017 10:16 AM
**To:** LEE John -TREASURY <john.s.lee@opg.com>
**Subject:** FW: EXTERNAL – Final Term Sheet - Provincial Protection Agreement

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** Monday, September 18, 2017 9:46 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; 'Ramchandani, Rima' <rramchandani@torys.com>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>
**Subject:** EXTERNAL – Final Term Sheet - Provincial Protection Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Good evening,
Please find attached, the final term sheet for the Provincial Protection Agreement (clean and black-lined). You'll see the attached reflects today's decision to square bracket the word "materially". This

version also incorporates minor edits from Tory's sent by Rima on Thursday evening (the addition of "or amends" and the word "electricity").
Thank you,
Anna

**Anna Strathy**
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

-----Original Appointment-----
**From:** Anis Hirani
**Sent:** Friday, September 15, 2017 3:03 PM
**To:** Anis Hirani; Mike Manning; 'HAHN PARKER Janet -TREASURY'; 'LEE John -TREASURY'; RYFA Ken -TREASURY; Ken Kandeepan; Anna Strathy; WONG Leslie -LAWDIV; John Kim; Ronald Kwan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF)
**Cc:** Martine Bell; Angie Georgakakos; Rasika Yatawara; Eden Amare
**Subject:** Provincial Support Agreement - OPG
**When:** Monday, September 18, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Boardroom Exec - 1 Dundas Street West, Suite 1400

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

**From:** Hanslep, Malle (MOF)
**To:** LEE John -TREASURY; ASHBOURNE, STEPHEN
**Cc:** Mike Manning
**Subject:** RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Friday, November 17, 2017 4:40:43 PM

---

Thanks John.
Regarding the other item that you discussed with Mike on the approach to amendments to the master trust indenture respecting notice to the Province, we would appreciate receive a mark-up of the master trust indenture of OPG's proposal for the Province's review as soon as possible for our review as this is an important item for the Province.
Thank you.
Malle

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** November 17, 2017 4:37 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** Hanslep, Malle (MOF); Manning, Mike (OFA)
**Subject:** RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
Thanks for turning this around quickly.

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Friday, November 17, 2017 4:24 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Ramchandani, Rima <rramchandani@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca) <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca) <Ronald.Kwan@ofina.on.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; tom.mckinlay@ontario.ca; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca) <Daniel.Cayley@ontario.ca>; Gadi Mayman (Gadi.Mayman@ofina.on.ca) <Gadi.Mayman@ofina.on.ca>
**Subject:** EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 8:29 PM
**To:** ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.

Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]

**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken - TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[na01.safelinks.protection.outlook.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting

that understanding.
We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.
In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.
Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[na01.safelinks.protection.outlook.com] |
**Twitter**[na01.safelinks.protection.outlook.com] |
**Unsubscribe**[na01.safelinks.protection.outlook.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | ASHBOURNE, STEPHEN |
| **Cc:** | Malle Hanslep (MOF); Mike Manning |
| **Subject:** | RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 4:36:53 PM |

Thanks for turning this around quickly.

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Friday, November 17, 2017 4:24 PM
**To:** Mansoori, Nina ; Feldman, Michael ; Saulnier, Brett ; WONG Leslie -LAWDIV ; LEE John -TREASURY ; RYFA Ken -TREASURY ; Ramchandani, Rima
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) ; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) ; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca) ; Mike Manning ; Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca) ; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) ; tom.mckinlay@ontario.ca; VINER, JON ; PRESTAGE, JA ; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca) ; Gadi Mayman (Gadi.Mayman@ofina.on.ca)
**Subject:** EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 8:29 PM
**To:** ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.

Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS [na01.safelinks.protection.outlook.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[na01.safelinks.protection.outlook.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes
**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[na01.safelinks.protection.outlook.com] |
**Twitter**[na01.safelinks.protection.outlook.com] |

**Unsubscribe**[na01.safelinks.protection.outlook.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | LEE John -TREASURY |
| **To:** | Ramchandani, Rima; "nmansoori@torys.com" |
| **Cc:** | Mike Manning; ASHBOURNE, STEPHEN; Malle Hanslep (MOF); WONG Leslie -LAWDIV; LAURETA LAPIRA May -TREASURY; LADAK Lubna -TREASURY; Ken Kandeepan |
| **Subject:** | RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 4:56:37 PM |

Rima:

Further to our early discussion I have confirmed with Mike the approach to the amendments, can you draft something that reflect the following points:

- Province gets a copy of all the notices regarding amendments that OPG sends to the Indenture Trustee under the MTI;
- Province gets a copy of all of the notices regarding amendments that the Indenture Trustee under the MTI sends out to bondholders;
- This could be put in the Change of Law Protection Agreement, where the Indenture Trustee is a party. However, if it is in the MTI, the Province would not be a party to the MTI as this may trip accounting test. Please note the Province request below that it be in the MTI.
- The failure by OPG or the Indenture Trustee to deliver a notice to the Province does not invalidate the amendments or the Province's guarantee which is the key point from the Dealers.

We will need Torys (in consultation with Oslers) to prepare the specific language and confirm where it will go.

If you could expedite this request that would be appreciated.

Thanks

John

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 4:41 PM
**To:** LEE John -TREASURY ; ASHBOURNE, STEPHEN
**Cc:** Manning, Mike (OFA)
**Subject:** RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Thanks John.

Regarding the other item that you discussed with Mike on the approach to amendments to the master trust indenture respecting notice to the Province, we would appreciate receive a mark-up of the master trust indenture of OPG's proposal for the Province's review as soon as possible for our review as this is an important item for the Province.

Thank you.

Malle

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** November 17, 2017 4:37 PM
**To:** ASHBOURNE, STEPHEN
**Cc:** Hanslep, Malle (MOF); Manning, Mike (OFA)
**Subject:** RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Thanks for turning this around quickly.

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Friday, November 17, 2017 4:24 PM

**To:** Mansoori, Nina <nmansoori@torys.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Ramchandani, Rima <rramchandani@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca) <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca) <Ronald.Kwan@ofina.on.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; tom.mckinlay@ontario.ca; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca) <Daniel.Cayley@ontario.ca>; Gadi Mayman (Gadi.Mayman@ofina.on.ca) <Gadi.Mayman@ofina.on.ca>
**Subject:** EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Thursday, November 16, 2017 8:29 PM
**To:** ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Mansoori, Nina
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow.

Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

[na01.safelinks.protection.outlook.com]

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have. The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

OSLER

**Rocco Sebastiano**
Partner
416.862.5859DIRECT
416.862.6666FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[na01.safelinks.protection.outlook.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

Blakes
**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[na01.safelinks.protection.outlook.com] |
**Twitter**[na01.safelinks.protection.outlook.com] |
**Unsubscribe**[na01.safelinks.protection.outlook.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation**

**Inc.**

| | |
|---|---|
| **From:** | WONG Leslie -LAWDIV |
| **To:** | Mansoori, Nina; Tobias P. Whitfield (MOF); LEE John -TREASURY |
| **Cc:** | RYFA Ken -TREASURY; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; LADAK Lubna -TREASURY |
| **Subject:** | RE: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 11, 2017 10:59:43 AM |

Dear Toby,

Just checking to see if you have had a chance to review our comments and whether the Province had any questions. We expect that the change of law protection agreement will be a topic of discussion at the Thursday morning rate-mitigation meeting and wanted to identify/address any questions from the Province beforehand if possible. Appreciate if you could let us know.

Regards,

Les

Leslie Wong
Senior Counsel
***Ontario Power Generation Inc.***
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 **|** E: leslie.wong@opg.com

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Friday, October 06, 2017 5:58 PM
**To:** 'Whitfield, Tobias P. (MOF)'
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; WONG Leslie -LAWDIV ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Hanslep, Malle (MOF) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; LADAK Lubna -TREASURY
**Subject:** EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next

week.
Best Regards,
Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]

**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | WONG Leslie -LAWDIV; Mansoori, Nina; LEE John -TREASURY |
| **Cc:** | RYFA Ken -TREASURY; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; LADAK Lubna -TREASURY |
| **Subject:** | RE: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 11, 2017 11:30:27 AM |

Les,

We are still reviewing and discussing our response. It is unlikely that we will have a response before tomorrow morning, but will try to respond as soon as we can.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
**Sent:** October 11, 2017 11:00 AM
**To:** Mansoori, Nina; Whitfield, Tobias P. (MOF); LEE John -TREASURY
**Cc:** RYFA Ken -TREASURY; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; LADAK Lubna -TREASURY
**Subject:** RE: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement

Dear Toby,

Just checking to see if you have had a chance to review our comments and whether the Province had any questions. We expect that the change of law protection agreement will be a topic of discussion at the Thursday morning rate-mitigation meeting and wanted to identify/address any questions from the Province beforehand if possible. Appreciate if you could let us know.

Regards,

Les

Leslie Wong
Senior Counsel
***Ontario Power Generation Inc.***
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 **|** E: leslie.wong@opg.com

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** Friday, October 06, 2017 5:58 PM
**To:** 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan,

Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
**Subject:** EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Toby,
Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.
As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.
Best Regards,
Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>

**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

TORYS LLP[na01.safelinks.protection.outlook.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>

**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program

Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer

immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | LIU Sheen -TREASURY |
| **To:** | Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine; PRESTON Stuart -TREASURY; LEE John -TREASURY |
| **Subject:** | RE: EXTERNAL – RE: Fair Hydro Plan Protocol Agreement - Subordinated and Junior Subordinated Debt |
| **Date:** | Thursday, November 16, 2017 11:30:50 AM |

Hi Carlos,
To expedite the process, we agree with your suggestion re short term funding, as per our last conversation , i.e. one single spread will be used for both sub and junior sub debt unless junior sub drops to non-investment grade, in which case additional 100bps will be added to junior sub for pricing purpose.
For long term funding, we are in agreement with your approach suggested below.
Thanks
Sheen

**From:** Carlos Yep [mailto:Carlos.Yep@ofina.on.ca]
**Sent:** Wednesday, November 15, 2017 3:44 PM
**To:** LIU Sheen -TREASURY
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine
**Subject:** EXTERNAL – RE: Fair Hydro Plan Protocol Agreement - Subordinated and Junior Subordinated Debt
*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi Sheen
There are 2 main simplifying comments that start by eliminating the need for the full pricing grid solely based on credit rating from BBB to AAA.
1)For the short term funding, it would be more efficient to use one single spread rather than multiple spreads for subordinated and junior subordinated.
2)For long term funding, there are no comparable issuers of subordinated & junior subordinated debt issues. Dealers can provide estimates for the subordinated and junior subordinated spreads for each tenor based on the specific characteristics of the Financing Trust.
Please call if you have any questions or would like to discuss further.
Regards
Carlos

**From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
**Sent:** Tuesday, November 07, 2017 1:23 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** PRESTON Stuart -TREASURY <stuart.preston@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>
**Subject:** Fair Hydro Plan Protocol Agreement
Ken,
As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.
Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.
Thanks
Sheen

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED,**

**PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; John Psinas; James Devine; Carlos Yep |
| **Subject:** | RE: Energy call this afternoon |
| **Date:** | Thursday, November 16, 2017 10:09:37 AM |

Hi Ken,

Sure, I wasn't sure if any sensitivity around it but will ask.

John

**From:** Ken Kandeepan
**Sent:** Thursday, November 16, 2017 10:07 AM
**To:** John Kim
**Cc:** Mike Manning ; John Psinas ; James Devine ; Carlos Yep
**Subject:** Energy call this afternoon

Hi John

It would be useful if Energy would share the draft Financing plan from OPG before the call.

Thanks

Ken k

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | John Kim |
| **Cc:** | Mike Manning; John Psinas; James Devine; Carlos Yep |
| **Subject:** | RE: Energy call this afternoon |
| **Date:** | Thursday, November 16, 2017 10:12:22 AM |

---

Thanks, pls let Energy know that for the call to be value added we need to see the Plan
Ken K

---

**From:** John Kim
**Sent:** Thursday, November 16, 2017 10:10 AM
**To:** Ken Kandeepan
**Cc:** Mike Manning ; John Psinas ; James Devine ; Carlos Yep
**Subject:** RE: Energy call this afternoon

Hi Ken,
Sure, I wasn't sure if any sensitivity around it but will ask.
John

---

**From:** Ken Kandeepan
**Sent:** Thursday, November 16, 2017 10:07 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Subject:** Energy call this afternoon

Hi John
It would be useful if Energy would share the draft Financing plan from OPG before the call.
Thanks
Ken k

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Sarah Harris |
| **Cc:** | Jean-Francois Beaupre; William Tan; Opal Kandelas |
| **Subject:** | RE: Energy"s PRRT |
| **Date:** | Tuesday, October 17, 2017 1:53:46 PM |

Thanks Sarah:
I've heard that and I guess time is an issue as well relative to our $975 m cap.

Mike

---

**From:** Sarah Harris
**Sent:** Tuesday, October 17, 2017 1:50 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
**Subject:** FW: Energy's PRRT

Hello Mike,

As a follow up to our conversation on Friday regarding IESO intercept letter and possible pushback from OPG, it looks like there will need to be a re-think on the Ministerial Directive.

We'll keep you posted.

Thanks,
Saraj

---

**From:** Ken Kandeepan
**Sent:** Tuesday, October 17, 2017 1:44 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Hi John

Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.

It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.

Thanks

Ken k

---

**From:** John Kim
**Sent:** Tuesday, October 17, 2017 1:37 PM
**To:** Lisa Stein <Lisa.Stein@ofina.on.ca>
**Cc:** Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** FW: Energy's PRRT

Hi Lisa and everyone,

Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund.

Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.

One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.

John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, October 17, 2017 11:18 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.

James

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** October 13, 2017 4:49 PM

**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
**Subject:** RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 1:29 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

You are correct.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 1:28 PM
**To:** Strang, James (TBS)
**Cc:** Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
**Subject:** RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 1:19 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:57 PM
**To:** Strang, James (TBS)
**Subject:** RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 12:55 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Subject:** RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:55 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** RE: Energy's PRRT

Last year's?

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Friday, August 18, 2017 12:54 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
**Subject:** RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

---

**From:** John Kim [mailto:John.Kim@ofina.on.ca]
**Sent:** August 18, 2017 12:53 PM
**To:** Strang, James (TBS)
**Cc:** Bruno Amara
**Subject:** Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT?  Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** John Kim
**To:** Mike Manning; Ken Kandeepan; Carlos Yep; James Devine
**Subject:** RE: FHP Financing Plan and Execution Plan - Nov 16.docx
**Date:** Thursday, November 16, 2017 11:02:17 AM

---

Ok, thanks....I agree that it'd be informative to call in.

-----Original Message-----
From: Mike Manning
Sent: Thursday, November 16, 2017 10:59 AM
To: John Kim <John.Kim@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
Subject: RE: FHP Financing Plan and Execution Plan - Nov 16.docx

Hi John:
In relation to the planned 15-year Fair Hydro issue, that topic didn't come up yesterday, but I did talk to John Lee this morning on the topic:
His view is that securitized structures cannot have refinancing risk, in part because rating agencies have trouble with this risk in terms of giving a rating. The issue is that rate payers cannot step in if there is a refinancing problem. It is ironic that the market disruption clause that was initially on the table would likely have solved this issue. I'm hoping to look at the financing plan to see if it fleshes out this issue more. Let me know if you think the call later today is unnecessary. It may still be useful to run through the issues.

Regards, Mike

-----Original Message-----
From: John Kim
Sent: Thursday, November 16, 2017 10:45 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
Subject: RE: FHP Financing Plan and Execution Plan - Nov 16.docx

Hi Mike,

My understanding is that there was a call late yesterday afternoon with Gadi and John Lee participating. Let me know if some of the questions we have are getting answered as in if we still are interested in the call later today.

Thanks,

John

-----Original Message-----
From: Mike Manning
Sent: Thursday, November 16, 2017 10:27 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: FW: FHP Financing Plan and Execution Plan - Nov 16.docx

-----Original Message-----
From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: Thursday, November 16, 2017 9:46 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY

<may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**From:** Mike Manning
**To:** John Kim; Ken Kandeepan; Carlos Yep; James Devine
**Subject:** RE: FHP Financing Plan and Execution Plan - Nov 16.docx
**Date:** Thursday, November 16, 2017 10:59:22 AM

---

Hi John:
In relation to the planned 15-year Fair Hydro issue, that topic didn't come up yesterday, but I did talk to John Lee this morning on the topic:
His view is that securitized structures cannot have refinancing risk, in part because rating agencies have trouble with this risk in terms of giving a rating. The issue is that rate payers cannot step in if there is a refinancing problem. It is ironic that the market disruption clause that was initially on the table would likely have solved this issue. I'm hoping to look at the financing plan to see if it fleshes out this issue more. Let me know if you think the call later today is unnecessary. It may still be useful to run through the issues.

Regards, Mike

-----Original Message-----
From: John Kim
Sent: Thursday, November 16, 2017 10:45 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
Subject: RE: FHP Financing Plan and Execution Plan - Nov 16.docx

Hi Mike,

My understanding is that there was a call late yesterday afternoon with Gadi and John Lee participating. Let me know if some of the questions we have are getting answered as in if we still are interested in the call later today.

Thanks,

John

-----Original Message-----
From: Mike Manning
Sent: Thursday, November 16, 2017 10:27 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: FW: FHP Financing Plan and Execution Plan - Nov 16.docx

-----Original Message-----
From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: Thursday, November 16, 2017 9:46 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

_____

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**From:** John Kim
**To:** Mike Manning; Ken Kandeepan; Carlos Yep; James Devine
**Subject:** RE: FHP Financing Plan and Execution Plan - Nov 16.docx
**Date:** Thursday, November 16, 2017 10:44:47 AM

---

Hi Mike,

My understanding is that there was a call late yesterday afternoon with Gadi and John Lee participating. Let me know if some of the questions we have are getting answered as in if we still are interested in the call later today.

Thanks,

John

-----Original Message-----
From: Mike Manning
Sent: Thursday, November 16, 2017 10:27 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: FW: FHP Financing Plan and Execution Plan - Nov 16.docx

-----Original Message-----
From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: Thursday, November 16, 2017 9:46 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**From:** Ken Kandeepan
**To:** Mike Manning; Carlos Yep; James Devine; John Kim
**Cc:** John Psinas
**Subject:** RE: FHP Financing Plan and Execution Plan - Nov 16.docx
**Date:** Thursday, November 16, 2017 1:34:45 PM

---

Hi

Both John and I have to attend another meeting with OPCD so pls see below my comments:

- Financing plan to include an appendix outlining the borrowing requirements of the trust over the next 24 months and timing of borrowing (both long and short term including the extent to which warehousing facilities will be used), timing and amount of equity injections from the Province.
- Page 8: Assessment for Reasonable Alignment – in case the variance exceeds the 15% threshold what options are available to the FSM other than increasing or decreasing the amount borrowed?
- Page 9: Term To Maturity of Funding Obligations. Provide an explanation as to why borrowing at the short end of the curve and refinancing is not a viable option as opposed to the 15 year term. The narrative appears to indicate that each issue from 2018 onwards will also be at the 15 year term, while this approach minimizes interest rate risk associated with refinancing it also results in more expensive debt
- Page 11: Refinancing – The entire debt strategy appears to rely on issuing debt that matures when the CEA is adequate to make principal repayments yet this section does allow for refinancing; an options that the Financing Plan effectively appears to ignore
- Page 12: Warehousing facility – is there any intention to hedge the floating rate borrowing from this facility to fixed rate?
- Page 15: Senior debt at only 25 bps back of the Province? Also the Province's long bond rate used is reflective of 30 year debt even though the FSM preferences appears to be 15 year term.

Thanks

Ken k

-----Original Message-----

From: Mike Manning

Sent: Thursday, November 16, 2017 10:27 AM

To: Ken Kandeepan ; Carlos Yep ; James Devine ; John Kim

Subject: FW: FHP Financing Plan and Execution Plan - Nov 16.docx

-----Original Message-----

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]

Sent: Thursday, November 16, 2017 9:46 AM

To: Mike Manning <Mike.Manning@ofina.on.ca>

Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>

Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

_____
THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

| | |
|---|---|
| **From:** | LAURETA LAPIRA May -TREASURY |
| **To:** | LEE John -TREASURY; Mike Manning; Tim Christie (ENERGY) |
| **Cc:** | LADAK Lubna -TREASURY |
| **Subject:** | RE: FHP Financing Plan and Execution Plan |
| **Date:** | Thursday, November 16, 2017 10:01:46 AM |
| **Attachments:** | FHP Financing Plan and Execution Plan - Nov 16 to Province.docx |

---

Hi everyone,

Please use the attached clean version.

Thanks!
May

May Laureta Lapira, CPA, CA | Senior Manager, Treasury | Ontario Power Generation
700 University Avenue, Toronto ON M5G 1X6 | Tel: (416) 592-3721| Fax: (416) 592-7758 |E-mail: may.lapira@opg.com

-----Original Message-----
From: LEE John -TREASURY
Sent: Thursday, November 16, 2017 9:46 AM
To: 'Mike Manning' <Mike.Manning@ofina.on.ca>
Cc: Tim Christie - Ministry of Energy (Tim.Christie@ontario.ca) <Tim.Christie@ontario.ca>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: FHP Financing Plan and Execution Plan - Nov 16.docx

Mike:

As requested, attached is the current draft of the financing plan which conforms to the regulation requirements.

John

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

# FAIR HYDRO TRUST
# FINANCING PLAN

[November] 2017

DRAFT

## Table of Contents

**A. Background** ..... 3
1. Financing Entity – Fair Hydro Trust ..... 4
2. OPG's Duties and Responsibilities ..... 5
3. Fair Allocation Amount and the Financing Plan ..... 6
**B. Principles and Assumptions of the Financing Plan** ..... 9
1. IESO Deferral for Future Months ..... 9
2. Future Transfers of Portions of the IESO's Regulatory Asset ..... 9
3. Term to Maturity of Funding Obligations ..... 9
4. Refinancing ..... 11
5. Cash Flow Requirements ..... 12
6. Current Funding Options and related Terms and Conditions ..... 12
7. Currency and Interest Rate Hedging Programs ..... 14
8. Fair Hydro Trust Costs and Expenditures ..... 14
9. Interest Rates ..... 14
10. Financing Reserve and Capital Accounts ..... 16
11. Indemnifications ..... 17
12. Financial Services Manager's Fees ..... 17
**C. Other Considerations** ..... 18
1. Market ..... 18
2. Application of Recovery Amounts to Funding Obligations ..... 18
3. Risk Mitigation Strategies ..... 20
4. Tax Minimization Strategies ..... 20
**D. Execution Plan for the Inaugural Debt Issuance** ..... 21

DRAFT

## A. Background

In June 2017, the Province enacted the *Ontario Fair Hydro Plan Act, 2017* (the Fair Hydro Act or the Act), to establish a framework under which the costs and benefits associated with the Government of Ontario's (the Province) clean energy initiatives are to be fairly allocated between present and future consumers of electricity under Ontario's Fair Hydro Plan (Fair Hydro Plan or FHP). The Act requires the Ontario Energy Board (OEB) to set rates that reduce average electricity bills for specified consumers by 25 percent commencing on July 1, 2017. The total bill reduction of 25 percent is comprised of an 8 percent reduction of the Provincial portion of the harmonized sales tax, with the remaining 17 percent achieved by decreasing energy rates for specified consumers paying the Regulated Price Plan rate and providing a global adjustment reduction credit for other specified consumers. The reduction in electricity bills will result in a shortfall in the Independent Electricity System Operator's (IESO) collections, which will need to be financed in order to pay the underlying global adjustment costs (GAC). The objective of the Fair Hydro Plan Program (FHP Program) is to refinance a portion of the deferred GAC over a longer period.

Under the Act, OPG is appointed as the Financial Services Manager (FSM) and is given the authority to, among other things, establish and manage one or more financing entities to raise debt financing (referred to as "funding obligations") for the purposes of the Act. The Act requires the Minister of Energy (MOE) to calculate the Fair Allocation Amount and for the FSM to incur funding obligations that, subject to refinancing, reasonably align with the Fair Allocation Amount, as adjusted by any readjustment amount.

The following attendant regulations were enacted in support of the Act:

- *Ontario Regulation 206/17 General* (General Regulation) provides details on specific requirements of the Act, in particular, the requirements for the Financing Plan.
- *Ontario Regulation 195/17 Fair Adjustment* provides details on rate reductions up to April 30, 2019 for specified consumers under the Act.
- *Ontario Regulation 196/17 Invoicing Requirements* provides details on information to be included with the invoice for specified consumers under the Act.

Under sections 21(1) and 21(2) of the Act, OPG, as FSM, has an obligation to prepare a Financing Plan in accordance with the Act and regulations, and to deliver it to the Minister of Energy. Under section 21(6) of the Act, the FSM has the right to amend the Financing Plan from time to time, without affecting any Clean Energy Adjustment that has already been determined or any funding obligations that have already been incurred before the amendment.

This Financing Plan was prepared based on the information available to, and the views of, OPG at the time this Financing Plan was prepared (or amended, as applicable). This Financing Plan also includes forward-looking information, which is subject to change. Actual outcomes and results may differ materially from what is expressed, implied or forecasted due to, but not limited to, changes in underlying assumptions relating to the Fair Allocation Amount, interest rates, investor interest, market capacity, market conditions, and credit rating assessments. References made to the "current Fair Allocation Amount" pertains to the Fair Allocation Amount received by OPG from the MOE at the end of September 2017. Terms that are capitalized and not defined herein have meanings ascribed to the same terms as in the Act or in the General Regulation. All amounts presented are in Canadian dollars.

## 1. Financing Entity – Fair Hydro Trust

Trustees

In **[**November**]** 2017, OPG as FSM, appointed Computershare Trust Company of Canada to act as the third party issuer trustee (Computershare or Issuer Trustee). Following its appointment, the Fair Hydro Trust (the Trust) was established as a financing entity contemplated in the Act through a declaration of trust. The Trust is structured to be bankruptcy remote from OPG. The Issuer Trustee is empowered under the declaration of trust to appoint, employ or contract with any person for the transaction of the Trust's activities. Under the Management Agreement between the Trust (by the Issuer Trustee) and OPG, the Trust appointed OPG as its agent to provide services and perform duties for the Trust in planning, implementing and administering the debt financing for the FHP Program.

In **[**November**]** 2017, OPG as FSM, appointed BNY Trust Company of Canada, as the third party indenture trustee (BNY or Indenture Trustee). The Indenture Trustee will be acting on behalf of all specified creditors, who are all persons who may have contractual claims against the Trust under the FHP Program agreements contemplated by the Master Trust Indenture (MTI) governing the debt issued by the Trust.

Unitholders

The Trust will carry on activities for the benefit of its unitholders outlined below:

**Table 1: Fair Hydro Trust Unitholders**

| Unitholder | Number of Units Held |
|---|---|
| FHP2017 Inc., a wholly-owned subsidiary of OPG | 1,000,000 |
| BNY, as Indenture Trustee | 1 |
| Total Units Outstanding | 1,000,001 |

Trust Capitalization Structure

The Trust will be 100 percent debt financed and the contemplated source of funding is summarized in Table 2.

DRAFT

**Table 2: Type and Source of Debt Funding**

| Tranche and Debt Type | Source of Funding | % of Total Funding Requirement |
|---|---|---|
| Tranche A<br>Senior Debt | Capital Markets | 51% |
| Tranche B<br>Subordinated Debt | OPG via Province | 39% |
| Tranche C<br>Junior Subordinated Debt | OPG via Province | 5% |
| | OPG via Capital Markets | 5% |

The Trust will issue senior debt in the capital markets to finance 51 percent of the total funding requirement related to the deferred GAC (Tranche A). The financing platform was developed to allow the Trust access to both the Canadian and United States (US) markets in order to optimize pricing, provide flexibility, and market capacity. Further details on the types of financing that can be utilized are outlined under the heading *Current Funding Options*.

Through periodic equity injections in OPG, the Province is expected to provide 44 percent of the total funding requirement throughout the duration of the FHP Program. OPG will invest the proceeds from the equity injections into the Trust, with 39 percent in Tranche B as subordinated debt and five percent in Tranche C as junior subordinated debt.

OPG will invest the remaining five percent of the total funding requirement in Tranche C as junior subordinated debt, using internally generated funds or proceeds raised from debt issuances from the public markets.

## 2. OPG's Duties and Responsibilities

Financial Services Manager under the Act

OPG, as FSM, will perform its duties and responsibilities under the Act and its attendant regulations. These include, but are not limited to, the following:

- Establish one or more financing entities to incur funding obligations for the FHP Program
- Prepare a written Financing Plan to be used by OPG to evaluate the incurrence of funding obligations to acquire and finance a portion of the GAC deferral
- Ensure that funding obligations are incurred in a manner that is consistent with the Financing Plan
- Forecast the cash flow requirements of the financing entities
- Determine the monthly Clean Energy Adjustment for a particular Reference Period
- Administer the Investment Asset on behalf of the financing entities
- Establish and charge fees to the financing entities to recover costs and expenditures and to earn a return
- Seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of similar size and type

DRAFT

- Apply debt proceeds to purchase an Investment Interest or repay or redeem outstanding debt
- Consider the interests of specified consumers with respect to stable and predictable electricity rates
- Deal with related parties on arm's length terms
- Fulfil various reporting requirements to stakeholders

Manager under the Management Agreement

OPG has also entered into a management agreement with the Issuer Trustee, on behalf of the Trust, whereby all of the powers and duties of managing the Trust have been delegated to OPG as the manager. The duties and responsibilities associated with this role includes:

- Determining whether to incur funding obligations to acquire an Investment Interest or to refinance existing funding obligations;
- Negotiating and entering into program agreements;
- Maintaining accounts and banking records;
- Preparing any offering documents furnished by the Trust to prospective purchasers of funding obligations; and
- Preparing financial statements and tax filings on behalf of the Trust.

OPG's entitlement to fees, as FSM, is subject to the payment priorities outlined in the MTI and summarized in Section C, *Application of Recovery Amounts to Funding Obligations,* Figure 5. The FSM is not entitled to resign from its duties or terminate the management agreement as long as funding obligations remain outstanding. OPG may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the MTI.

## 3. Fair Allocation Amount and the Financing Plan

The Fair Allocation Amount, including the readjustment amount, is an amount calculated under the Act and the regulations by the MOE for every Reference Period over the term of the FHP Program. It is intended to allocate the estimated Clean Energy Costs and Clean Energy Benefits fairly among specified consumers.

The FSM is required to prepare a Financing Plan under the Act to evaluate whether funding obligations should be incurred by the Trust. OPG is to have regard to certain prescribed principles (outlined in detail in Section B below), including that funding obligations should be incurred so that the estimated Finance Amount that would become due and payable during a Reference Period will, subject to refinancing, reasonably align with the Fair Allocation Amount determined in respect of such Reference Period, as adjusted by a readjustment amount where applicable. In other words, the Financing Plan should contemplate the issuance of funding obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by specified consumers to ensure that they are bearing their fair share of the costs of providing Clean Energy benefits. The Act also provides that each funding obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

Figures 1 and 2 illustrate the FHP Program's financing profile over the next 30-year period.

**Figure 1: Fair Hydro Trust Debt Balance**

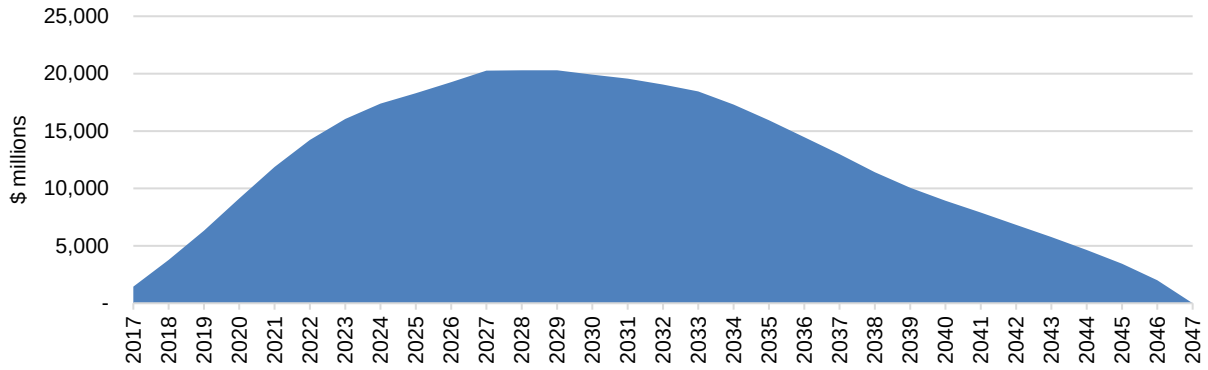
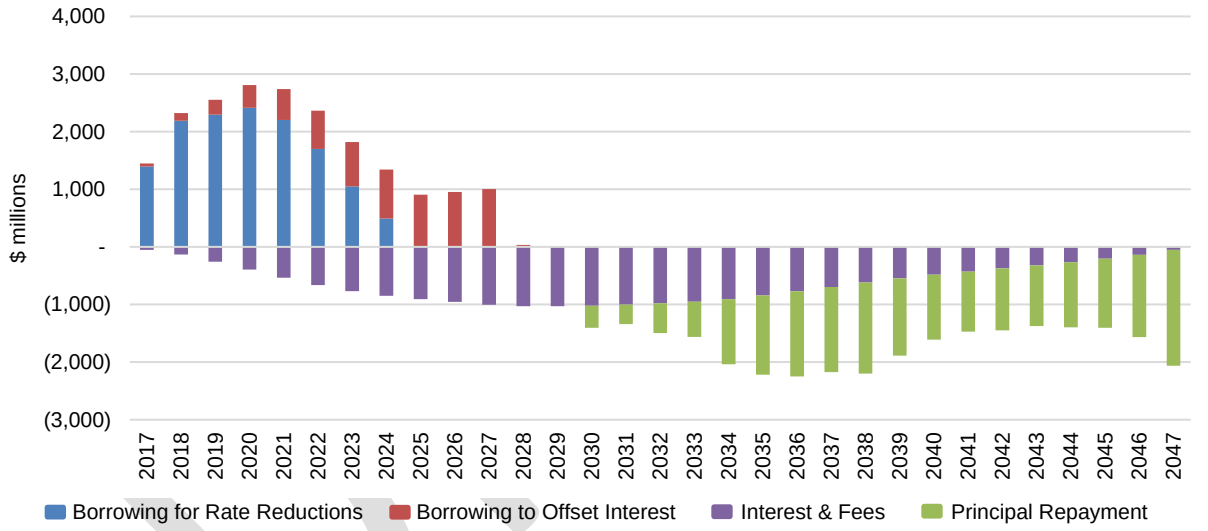



**Figure 2: Fair Hydro Trust Borrowing and Repayment Profile**




The Fair Allocation Amount is a net amount, either positive or negative, equal to the difference between the following:

1) estimated costs of clean energy initiatives without adjustment; and
2) a re-profiling of the costs in item 1) plus:
    a. the estimated operating and financing costs of the FHP Program, and
    b. the repayment of the readjustment amount.

A negative Fair Allocation Amount in any Reference Period generally represents a period of borrowing, and a positive Fair Allocation Amount generally represents a period of principal repayment.

In a Reference Period when the Fair Allocation Amount is negative, the operating and financing costs of the FHP Program are shown in the Fair Allocation Amount calculation as an increase in

the debt of the FHP Program. This treatment is equivalent to increasing the amount of the deferred GAC by providing specified consumers with a higher rate reduction. The repayment of the related debt is included in the Fair Allocation Amount calculation to establish that all debt will be repaid by the end of the FHP Program. During these periods, operating and financing costs of the FHP Program are considered to align with the Fair Allocation Amount as long as these costs do not exceed the corresponding components in the Fair Allocation Amount calculation in any Reference Period by more than +/- 15 percent. If these costs exceed the corresponding components of the Fair Allocation Amount by more than +/- 15 percent, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount. Variability in costs is expected throughout the FHP Program as the Fair Allocation Amount was calculated on a forecast basis. Accordingly, any variability that is less than +/- 15 percent is deemed to be within an acceptable range.

Assessment for Reasonable Alignment

The Act stipulates that the Financing Plan must reasonably align with Fair Allocation Amount. This requirement is expected to be achieved through the consistent application of the following methodology, guidelines, and steps throughout the term of the FHP Program:

- Maintain a financial model that captures the funding obligations requirements of the Trust. Translate the funding requirements into expected cash flows by determining the related interest amounts, reserve requirements, fees, principal repayment, and the Trust's operating costs. This exercise will be performed for each Reference Period over the term of the program.
- Determine and assess the following:
    - For Reference Periods when the Fair Allocation Amount is negative, determine whether the forecast cash flow requirements is less than or equal to the financing and operating costs reflected in the Fair Allocation Amount as additional debt of the Trust. If the forecast cash flow requirements exceed the addition to the debt in the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
    - For Reference Periods when the Fair Allocation Amount is positive, determine whether the forecast cash flow requirements is less than or equal to the Fair Allocation Amount. If the forecast cash flow requirements exceed the Fair Allocation Amount by more than +/- 15 percent, determine the cause of the variance. In these situations, the FSM will take reasonable actions in accordance with the Act and regulations to align to the Fair Allocation Amount.
- Due to the timing of the collection of cash flows, the General Regulation contemplates the use of reserve accounts. Provisions for reserves are excluded from the reasonable alignment assessment as these amounts are required to allow the Trust to incur the funding obligations. In addition, the reserve balances will be credited to specified consumers at the end of the term through the true-up mechanism if they are not required to satisfy terms of any funding obligation agreements pursuant to the MTI. Refer to *Financing Reserve and Capital Accounts* for more information on reserve accounts.
- Utilize and apply an accrual methodology when determining costs of the program, except for debt issuance costs, principal repayments, and reserve requirements.

DRAFT

The FSM will establish a methodology for assessing reasonable alignment at such time when a new Fair Allocation Amount letter is received from the MOE.

## B. Principles and Assumptions of the Financing Plan

This section outlines the various principles and assumptions that guided the development of this Financing Plan in accordance with the Act and section 14 of the General Regulation. The same principles and assumptions will apply to all subsequent revisions of the Financing Plan, if required.

The FSM is required to make reasonable assumptions regarding the following matters:

### 1. IESO Deferral for Future Months

The FSM will base its expectation of the IESO deferrals on the most current version of the Fair Allocation Amount and readjustment amounts provided by the MOE. Actual IESO deferrals and forecasts of near term deferrals, if available, will be used to guide forecast deferrals over the next quarter.

### 2. Future Transfers of Portions of the IESO's Regulatory Asset

The Trust anticipates periodic purchases of Investment Assets from the IESO when the cumulative balance of its regulatory assets is large enough to be financed and when effective financing options are available to the Trust. The market capacity for both long-term and short-term debt financing will also be key elements to consider when determining the most cost efficient option.

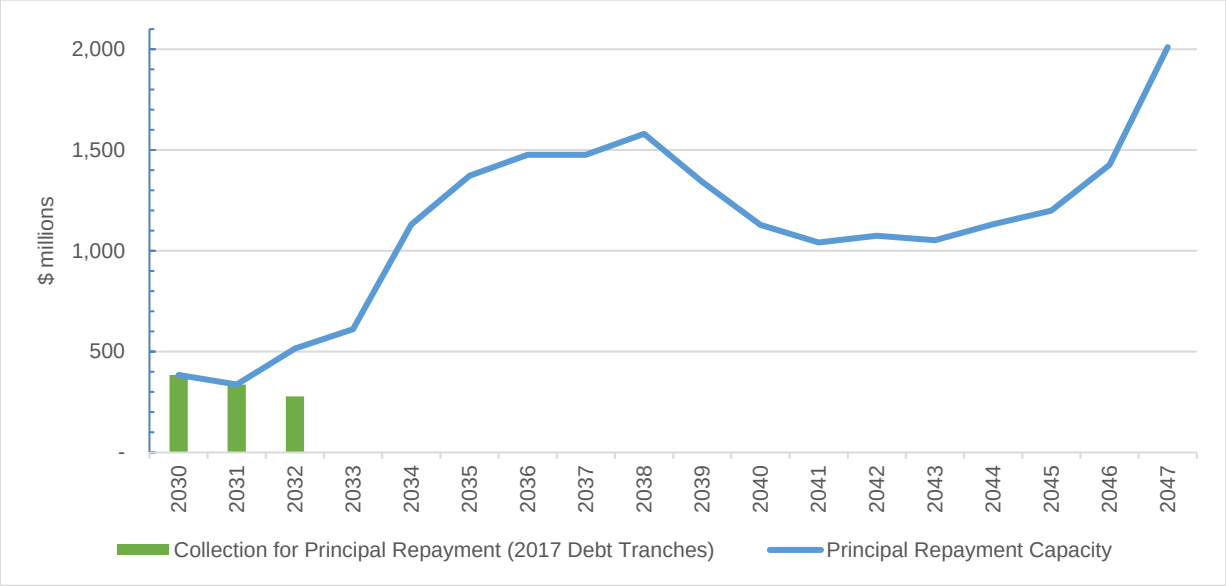
### 3. Term to Maturity of Funding Obligations

Initial Debt Tranche – 2017 Borrowing

The forecast debt profile for the Trust based on the current Fair Allocation Amount received from the Province at the end of September 2017 indicates that principal repayments can commence in 2030 (see Figure 3). However, the principal repayment amount for this year is expected to be relatively small at approximately $400 million for the year or about $200 million for each six-month Reference Period. Accordingly, principal repayment of the 2017 debt tranche is expected to commence in 2032 when the cumulative principal repayment amount reaches approximately $1 billion, which indicates a minimum term for the initial debt issuance of 15 years (i.e. 2017-2032). This offering is expected to include $500 million of senior notes, which is a sizeable amount to ensure sufficient liquidity and marketability. Subsequently, principal repayment increases to approximately $1.5 billion annually or $0.75 billion for each Reference Period by around 2035 allowing for larger single maturities.

DRAFT

**Figure 3: Principal Repayment Profile Based on Current Fair Allocation Amount**



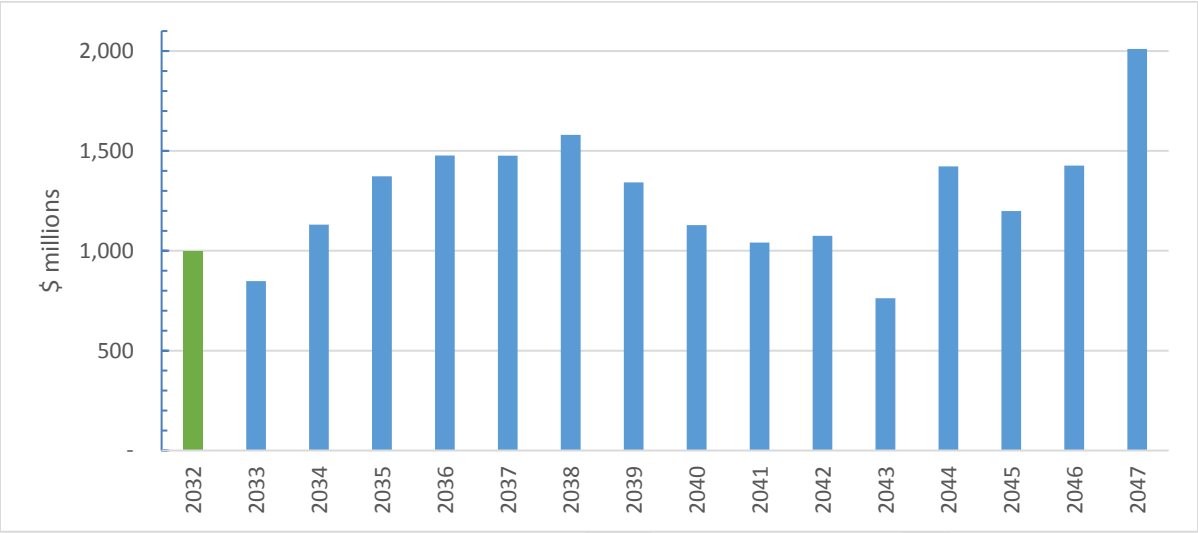

This length of term for an asset-backed security (ABS) has no precedence in the Canadian market where terms are typically 10 years or less. Therefore, it is expected that a higher premium will be required to attract investors. Refer to Table 3 under the heading *Interest Rates* for the indicative current pricing range for all debt tranches, including senior debt.

For a new issuer such as the Trust offering a unique program, a strategy of issuing a 15-year term paper may not provide an optimal initial pricing given the absence of a specific credit curve for the Trust. It is expected that at program inception, the Trust will issue debt to cover both short and long-term exposures. The terms of maturities will be staggered, up to year 30, with maturities capped at the projected Fair Allocation Amount and readjustment amount, during each six-month Reference Period. In addition, consideration for a combination of characteristics established by the Fair Allocation Amount curve and investor interest will drive the term of a funding obligation.

Indicative Debt Maturities for Post-2017 Borrowings

Using the current Fair Allocation Amount, the forecast debt maturities over the life of the FHP Program was derived in Figure 4 for illustrative purposes only and is current as of the date of this Financing Plan. Actual debt maturities may differ materially from what is illustrated in Figure 4 primarily due, but not limited to, future changes in the Fair Allocation Amount.

**Figure 4: Indicative Debt Maturities Using Current Fair Allocation Amount**




The key objective when determining the indicative debt maturities in Figure 4 is to align the annual amount of debt maturities with the principal repayment capacity under the Fair Allocation Amount curve. In years where the principal repayment capacity is less than $500 million, the debt maturities will fall in subsequent years where the cumulative maturities do not exceed the cumulative principal repayment capacity. This type of decision will be made along with other considerations such as size of each issuance to ensure liquidity (and thus, cost efficiency). As this schedule is based on the current Fair Allocation Amount curve and its underlying assumptions, a shift in the curve and/or any changes in the assumptions will result in changes to this indicative debt maturity schedule.

## 4. Refinancing

The MTI requires the Trust to establish and maintain a deposit account in the name of the Indenture Trustee for a refinancing account held for the benefit of the Indenture Trustee and specified creditors. All proceeds arising from notes and borrowings related to refinancing shall be deposited to this refinancing account.

Debt refinancing may occur under the following scenarios:

- When original financing is incurred, the short end of the yield curve is more cost efficient than the long end, on a relative basis;
- The Fair Allocation Amount or readjustment amount is updated; and
- In line with the provisions of the Act, no Clean Energy Adjustments will be collected from specified consumers between July 1, 2017 and April 30, 2021, except in limited circumstances. Accordingly, any debt maturities during this period will need to be refinanced.

Refinancing decisions will be guided by the Trust's ability to secure cost efficient long-term financing from investors and the maximum principal repayment profile dictated by the fair allocation curve.

## 5. Cash Flow Requirements

The Trust's cash flow requirements to meet its contractual obligations include, but are not limited to, the following:

- Payment of taxes, if any
- Reimbursing the FSM for costs and expenditures outlined in sections 10.2 (3) and 10.13 (3) of the General Regulation and summarized under the heading *Fair Hydro Trust Costs and Expenditures*
- Interest and fees on all outstanding borrowings
- Scheduled principal repayments
- Deposits or transfers to reserve accounts required by the MTI and summarized under the heading *Financing Reserve and Capital Accounts*
- OPG's fees as FSM as summarized under the heading *Financial Services Manager's Fees*
- Termination payments to defaulting derivative counterparties, if applicable

Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations* for the cash flow receipts' payment priority.

## 6. Current Funding Options and related Terms and Conditions

To achieve cost efficiencies, the following funding vehicles could be utilized in either the Canadian or US markets (except for the subordinated debt), from time to time, depending on the financing requirement, as well as market capacity and relative pricing at the time of issuance:

- **Short Term**: asset-backed commercial paper (ABCP) conduit and revolving bank lines of credit in the Canadian market
- **Medium to Long-Term**: term ABS and privately placed debt securities in either the Canadian or US markets
- **Subordinated Debt**: to be provided by OPG

<u>Syndicated Short-Term Warehousing Facility</u>

Short-term notes will be issued by the Trust to fund short-term borrowing requirements. The amount outstanding will be periodically refinanced and repaid by long-term funding from the capital markets once the cumulative amount of the Investment Asset available to be purchased is approximately $300 million to $500 million. This warehouse facility is expected to be utilized on a monthly basis to fund the Investment Asset purchases from the IESO.

The Trust has **[**secured a warehouse facility agreement with a bank syndicate comprising of CIBC, RBC, and Goldman Sachs for $800 million under a 2-year committed term, which would be primarily funded through their ABCP conduit **MONITOR]**.

DRAFT

Revolving Bank Lines of Credit

This type of funding option provides the Trust with a warehouse facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period. This bank funding option will be utilized when it is more cost effective than short-term notes.

Term ABS

ABS are notes that will be backed by the Trust's Investment Asset and issued under the MTI. The specific terms and conditions of each series, class or tranche of notes will be set forth in a supplemental indenture and, if applicable, a terms document authorizing that series, class or tranche.

To minimize financing costs, term ABS bullet bonds will be used rather than amortizing bonds, which require an additional premium by investors. The current intent is to issue term ABS notes in the 15 to 25 year term to fill out the yield curve based on the Fair Allocation Amount and investor demand.

Subordinated Debt

Concurrent with every issuance of senior debt by the Trust, it is expected that OPG will acquire subordinated debt in an amount not to exceed 49 percent of all outstanding debt of the Trust at any time. The subordination of OPG's debt investment plays an important credit enhancement role, which is expected to minimize the cost of senior debt tranches in the external market by garnering a higher rating through some differentiation. The subordinated debt will assume substantially all of the liquidity and deferral risk for the structure. Accordingly, the cash flow payment waterfall in Figure 5 reflects this subordination structure.

The credit rating for the subordinated debt will be dependent on the rating agency assessment and evaluation of the stress credit scenarios. It is expected that there will be a minimum of one rating category differential between each debt tranche.

The interest rate applicable to subordinated debt is expected to be the aggregate of:

- The applicable base rate, which is the relevant senior debt rate, plus
- The applicable spread, which represents the additional interest, in basis points, over the base rate that will apply to the relevant subordinated debt. This rate will be established by OPG through an annual survey of market spreads from a syndicate of banks.

The subordinated debt will maintain a minimum of one rating to allow for appropriate benchmarking/pricing. A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample. The terms of the subordinated debt will be finalized prior to the initial debt issuance.

For the short-term subordinated debt lending facility, the banking syndicate will provide OPG with short-term lending spreads for comparables on committed bank credit facilities on an annual basis (i.e. ratings based on a pricing grid). A simple average of the market spreads will determine the rate, excluding the highest and lowest rates in the survey sample.

The process will be consistent with the Subordinated Debt Pricing Protocol Agreement between the Trust and the Ontario Financing Authority.

## 7. Currency and Interest Rate Hedging Programs

As the FHP Program develops over time, the Trust will consider interest rate and currency swaps and other hedging instruments, as required. Refer to the Section C, *Risk Mitigation Strategies* for further details on hedging and other instruments that could be used by the Trust.

## 8. Fair Hydro Trust Costs and Expenditures

The costs and expenditures incurred by OPG as FSM on behalf of the Trust will be in accordance with sections 10.2 (3) and 10.13 (3) of the General Regulation as amended in November 2017.

Specifically, the costs and expenditures incurred by the FSM include, but are not limited to, the following:

1. Underwriters or selling agents for funding obligations.
2. Banking fees, including but not limited to structuring fees or work fees.
3. Fees of issuing and paying agents for funding obligations.
4. Fees of trustees.
5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.
6. Fees of legal counsel.
7. Rating agency fees.
8. Filing or registration fees.
9. Direct costs of OPG for employees whose work consists exclusively of the provision of services to the Trust in relation to prescribed matters.
10. Costs and expenditures incurred on behalf of any financing entity in connection with OPG's duties under the Act in relation to the financing entity.
11. Costs and expenditures incurred in relation to a management agreement between OPG as FSM and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

The costs and expenditures incurred directly by the Trust, as well as the fees of the FSM and the costs and expenditures incurred by the FSM on behalf of the Trust, are Finance Amounts that can be recovered by the Trust (as carrying costs) from the IESO until July 2021 and thereafter through Clean Energy Adjustments charged to specified consumers.

## 9. Interest Rates

As the FHP Program is expected to last until 2047, it is appropriate to assume that long-term debt rates are the primary components of the financing costs for the overall program. In estimating indicative interest rates for each tranche and debt type, the following key considerations and assumptions were utilized:

- The base case credit rating assumptions are as follows:
    - Target of "AAA" for Tranche A – Senior Debt,



DRAFT

  - "A" for Tranche B – Subordinated Debt which is dependent on the senior debt credit rating, and
  - "BBB" for Tranche C – Junior Subordinated Debt
- Using the projected Province of Ontario long bond rate of 4 percent plus a 25 basis points premium to reflect the securitization structure, the estimated indicative pricing over the life of Tranche A – Senior Debt is 4.25 percent
- For comparative purposes, the current pricing using the Province of Ontario long bond rate of 3.0 percent plus the same 25 basis points premium was included to reflect the current low interest rate environment
- A higher return on the subordinated debt is required to compensate for incremental risks assuming:
  - Rating agencies attribute a lower rating to the subordinated debt relative to the senior debt due to the lower priority in the cash flow waterfall (refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*)
  - Senior debt's rating needs to be credit enhanced to address collection and liquidity risks

To achieve cost efficiencies, the Trust was established with a tiered debt structure to achieve a higher credit rating for the senior debt and to maximize market capacity by accessing the AAA market to achieve cheaper financing costs overall. The following table summarizes the indicative pricing range by debt tranche:

**Table 3: Indicative Pricing by Debt Tranche**

| Tranche and Debt Type | Risk Profile | Source | % of Total Funding Requirement | Rating Category Estimate | Current Pricing | Potential Rating Range | Price Based on Rating Range |
|---|---|---|---|---|---|---|---|
| Tranche A Senior Debt | Lowest Risk | Capital Market | 51% | AAA | 3.25% | AAA – AA | 3.25% – 3.75% |
| Tranche B Subordinated Debt | Medium Risk | OPG via Province | 39% | A | 4.5% | AA – A | 4.0% – 4.5% |
| Tranche C Junior Subordinated Debt | Highest Risk | OPG via Province | 5% | BBB | 5.5% | A – BBB | 5.0% – 5.75% |
| | | OPG via Capital Markets | 5% | | | | |
| **Weighted Average** | | | | | **4.0%** | | **3.75% – 4.5%** |

The credit range for each debt tranche will be determined by the overall credit strength of the financing structure and its resilience under various credit stress scenarios. The rating agencies' assessment of the guarantee to bondholders provided by the Change of Law Protection Agreement, discussed under the heading *Indemnifications*, is one of the major factors that will influence the final ratings of each debt tranche. In addition, in assessing credit stress, the following factors, among others, will be considered: (i) declining energy usage throughout the securitization period, (ii) forecast collections in peak months not materializing, and (iii) declining consumption equal to the largest absolute annual forecast error. The market capacity for

securitization notes is predominantly available for AAA-rated notes, limited for AA-rated notes, and not tested or developed for A-rated or lower. The pricing estimates provided in Table 3 reflect these credit and liquidity factors. Debt pricing will be finalized at the time of the initial issuance.

## 10. Financing Reserve and Capital Accounts

Section 5(1) of the General Regulation stipulates that the Finance Amount shall include any amounts the Trust deposits into capital or finance reserve accounts as required under the governing documents of the funding obligations (i.e. the MTI). The accounts also act as a credit enhancement feature in support of the Trust borrowings. Any unused balance in the segregated trust accounts at the end of the term will be credited to specified consumers. Refer to Figure 5 in Section C, *Application of Recovery Amounts to Funding Obligations*, for the priority order of deposits into the reserve accounts.

The MTI between the Trust and the Indenture Trustee specifies the establishment and maintenance of the following key reserve accounts:

Finance Reserve Accounts

*Program Cash Reserve Account*

The Trust shall establish and maintain a Program Cash Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the specified creditors. Available collections not required to be paid to specified creditors at such time will be credited to a capital reserve account in accordance with the terms of any applicable funding obligation agreement. The funding obligation agreement for a series, class or tranche of funding obligations will specify whether such series, class or tranche has the benefit of a capital reserve account.

*Series Finance Reserve Account*

From time to time, the Trust may establish a Series Finance Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This finance reserve account may be established for the purpose of allowing the Trust to reserve funds to pay finance charges (including, without limitation, interest and payments under derivative agreements) for a series of issuer funding obligations. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

Capital Reserve Account

*Series Capital Reserve Account*

From time to time, the Trust may establish a Series Capital Reserve Account, a deposit account in the name of the Indenture Trustee with an eligible institution. This capital reserve account may be established for the sole purpose of allowing the Trust to accumulate funds to be used to make repayments in respect of funding obligations. Details of any period of accumulation and the

amounts to be accumulated shall be specified in the related funding obligation agreement. Payments of available collections shall be credited to this account, to the extent that there is a requirement for such funds, in accordance with the terms of the applicable funding obligation agreement and the MTI. Each Series Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable specified creditors.

## 11. Indemnifications

The following forms of indemnities are expected to be issued for the FHP Program:

Change of Law Protection Agreement **[MONITOR]**

The Change of Law Protection Agreement provides bondholders a guarantee in the event of a protection event and acts as a credit enhancement for the Trust's senior debt. The guarantee will be triggered if:

i. the Province changes the Fair Hydro legislation/regulations or passes other legislation/regulation that materially adversely affects the ability of the Trust to service interest or principal payments on its debt, or

ii. the Act is declared invalid/unconstitutional.

Upon a protection event, the Province is required to either, at its election: (i) pay the specified claims consisting of all Finance Amounts, excluding ■ **[update],** owing by the Trust as they become due and payable, or (ii) assume the Trust's obligations as primary obligor, **[**in each case**]**, without acceleration of the specified claims.

Issuer Trustee

Each of the Issuer Trustee and its related parties will be indemnified out of the trust property from and against all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, investigations, proceedings, costs, expenses or disbursements of any kind arising out of, among other things, the declaration of trust or any other program agreement, the administration of the Trust's assets or the action or inaction of the Issuer Trustee's agents, except for its own fraud, willful misconduct, bad faith or negligence.

Limited Recourse

The obligation of the Trust to pay principal and interest on the funding obligations is subject to the allocation and payment provisions in the MTI and the applicable funding obligation agreement and limited to amounts available from the collateral. Neither the Indenture Trustee, OPG nor the Issuer Trustee in its individual capacity will be personally liable for the payment of the principal or interest on the notes or any other funding obligation, or for the Trust's covenants and agreements contained in the MTI.

## 12. Financial Services Manager's Fees

All fees charged by OPG to the Trust will be in accordance with the provisions of the General Regulation.

Subject to OEB approval, OPG is entitled to the following:

- For 2017, OPG will receive $3.1 million and an amount to cover up-front costs incurred between June 1 and December 31, 2017 by OPG on behalf of the Trust (e.g. legal fees, rating agency fees, trustee fees). The $3.1 million includes a $600,000 fee and $2.5 million to cover costs incurred prior to June 1, 2017. The expenses between June 1 and December 31, 2017 will also include direct costs of OPG employees who are dedicated exclusively to Fair Hydro matters.
- For January 2018 to March 2019, OPG will receive (i) a monthly base fee equal to 7.5 basis points, divided by 12, multiplied by the average monthly outstanding debt of the Trust, (ii) a variable fee that is calculated based on how the interest rate for external funding tranches for that period compare to forecast interest rates for the period (and which fee is limited to ± 2% of 5% of the total external funding tranches issued in the period), and (iii) third-party expenses and direct employee costs of dedicated Fair Hydro employees.
- For April 2019 to March 2020, and every 12-month period thereafter, OPG will make submissions to the OEB on the base fee, variable fee and expenses. The base fee will be based on comparable fees charged by full-service managers of securitization vehicles (and other similar funds). The variable fee will be calculated in the same manner noted above, but with a refresh of forecast interest rates for the relevant period. For 2019 onward, the expenses will include direct employee costs of dedicated Fair Hydro employees only if the fees of comparable managers also include such direct costs.

A written confirmation from OPG's external auditor or another external auditor is required to accompany each submission to the OEB for the recovery of expenditures incurred by OPG on behalf of the Trust. The report shall confirm the accuracy of the costs and expenditures charged to the Trust, that such amounts were incurred by OPG, and the amounts were paid to third parties (with the exception of direct employee costs).

## C. Other Considerations

### 1. Market

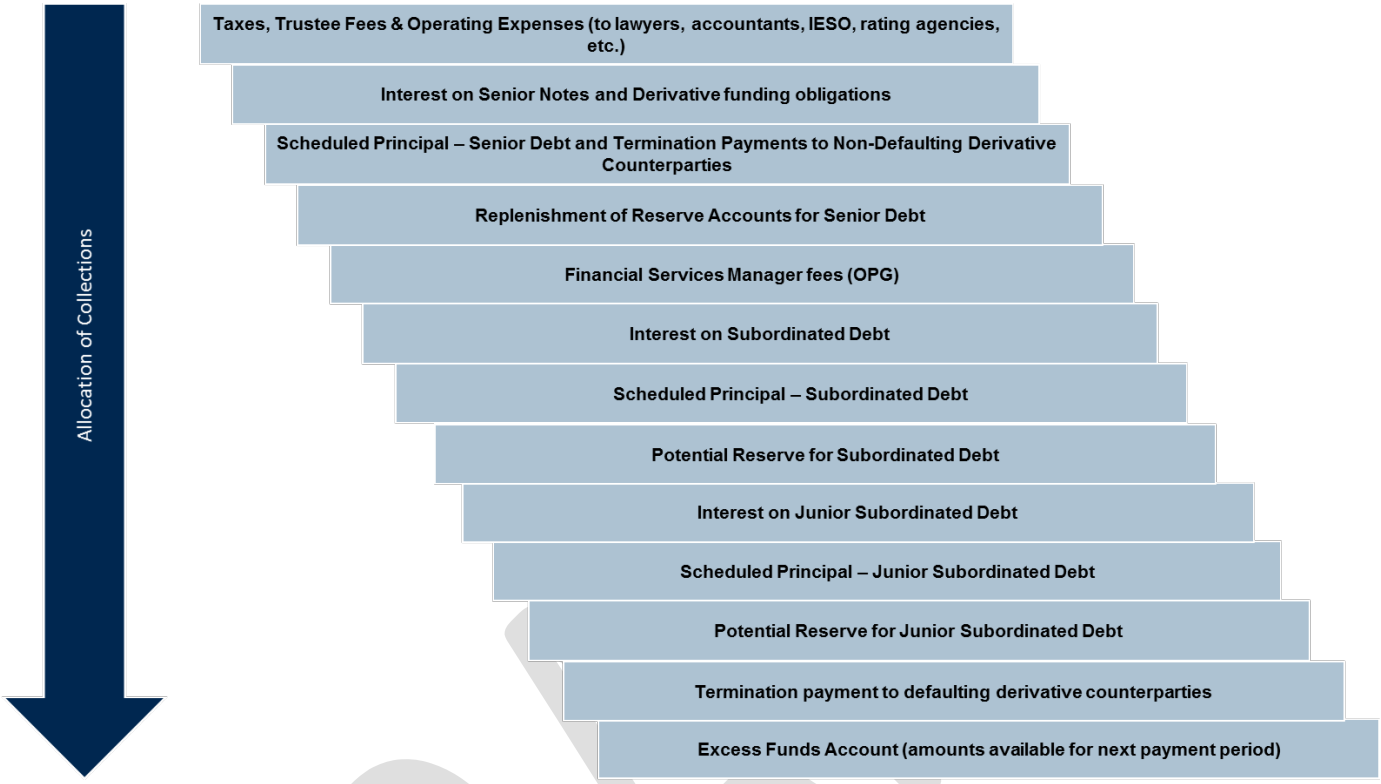
The FHP Program's financing platform was developed to allow for access to both the Canadian and US markets in order to have the best pricing and flexibility options. To the extent that the Canadian market has sufficient capacity and provides cost efficiency, priority will be given to the domestic market. However, there is no precedence in the Canadian market for term ABS notes longer than 10 years, nor the size of funding required by the FHP Program. Due to this, the ability to access the US market provides the program additional financing capacity in the event that the Canadian market cannot support the financing requirement. The FSM will make its decision on which market to access on a deal-by-deal basis.

For the initial debt issuance in 2017, it is anticipated that a term ABS funding will be sourced from the Canadian market as it is expected to be more cost efficient given current market conditions.

### 2. Application of Recovery Amounts to Funding Obligations

The MTI outlines the payment priorities for the Trust's receipt of cash flows. Figure 5 below summarizes the significant components of the waterfall.

**Figure 5: Waterfall for Fair Hydro Trust Cash Collection**




Payment Priorities

On each payment date, all amounts on deposit in the collection account will be paid out in the following order of priority:

1. to pay (A) all taxes exigible for which a governmental authority is given priority over the specified creditors under the laws of the applicable jurisdiction, and then (B) fees, expenses and reimbursements owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount of ■ percent[1] of the outstanding principal amount of all funding obligations at such time;
2. to pay (A) interest, fees and other amounts owing in respect of senior debt and (B) amounts payable to derivative counterparties other than termination payments;
3. to pay (A) principal owing in respect of senior debt to the extent required to satisfy any payment of principal; and (B) termination payments owing to derivative counterparties where the derivative counterparty is not the defaulting party or the sole affected party;
4. to deposit or transfer to any reserve account in respect of senior debt, the amount required pursuant to the applicable funding obligation agreement;
5. to pay fees, expenses, reimbursement and indemnity amounts owing to OPG;
6. to pay interest, fees and other amounts owing in respect of subordinated debt;

[1] To be confirmed.

7. to pay principal owing in respect of subordinated debt to the extent required to satisfy any payment of principal;
8. to deposit or transfer to any reserve account related solely to subordinated debt the amount required pursuant to the applicable funding obligation agreement;
9. to pay interest, fees and other amounts owing in respect of junior subordinated debt;
10. to pay principal owing in respect of junior subordinated debt to the extent required to satisfy any payment of principal;
11. to deposit or transfer to any reserve account related solely to junior subordinated debt the amount required pursuant to the applicable funding obligation agreement;
12. to pay termination payments owing to derivative counterparties where the derivative counterparty is the defaulting party or the sole affected party; and
13. to be held in the collection account for distribution in the above order of priority on the next payment date; or (ii) after all funding obligations have been paid and discharged, and all other amounts have been paid in full, to pay to the Trust.

## 3. Risk Mitigation Strategies

Currency Risk

If the Canadian market cannot support the financing capacity of the FHP Program in the future and/or it is less cost efficient than the US market at the time of each subsequent debt issuance, the Trust will access the US market for long-term financing.

Under this scenario, hedges will be considered to mitigate currency exposure. For the initial debt issuance in 2017, it is anticipated that funding will be sourced from the Canadian market only as it is expected to be more cost efficient and there is sufficient market capacity.

Interest Rate and Refinancing Risk

The FHP Program is expected to span over a 30-year period until 2047 with various series of notes expected to be issued at various maturity dates. Given the long-term timeline of the program, it is subject to interest rate and refinancing risk.

Interest rate hedges, including bond forwards and/or forward start interest rate swaps, will be considered in the future to mitigate potential interest rate risk and/or refinancing risk in a cost-efficient manner.

## 4. Tax Minimization Strategies

Beneficiary – FHP2017 Inc.

The majority unitholder and beneficiary of the Trust is exempt from federal tax under section 149 of the *Income Tax Act, Canada* and from Ontario tax under section 27 of the *Ontario Taxation Act, 2007*.

The beneficiary is subject to payments in lieu of federal and provincial income taxes (PILs). In order to minimize the tax associated with the Fair Hydro Plan, an exemption from PILs payable

on income from the Trust was secured for the beneficiary **[MONITOR]**. This will result in a reduction in the income tax costs related to the Financing Plan.

Fair Hydro Trust

Trust income will be fully distributed to unitholders to ensure that there is no tax payable by the Trust.

## D. Execution Plan for the Inaugural Debt Issuance

It is anticipated that the first term ABS notes will be issued in the 1st or 2nd week of December 2017 to purchase the accumulated regulatory assets from the IESO, expected to be approximately $1 billion at that time. Accordingly, the expected size of the senior debt tranche is approximately $500 million representing the 51 percent funding structure allocation from capital markets. In the event the term markets do not have sufficient capacity for the full required funding of $500 million, the warehouse facility will be utilized. OPG will purchase subordinated and junior subordinated debt issued by the Trust for approximately $500 million representing the remaining 49 percent of the total funding requirement.

Key Activities

The following table outlines the key activities required to execute the first purchase of the Investment Asset:

| Activity | 2017 Timeline |
|---|---|
| Rating Agencies' Assessment | End of November |
| Marketing & Roadshow | Last week of November – 1st week of December |
| Term Debt Closing & Funding | 1st – 2nd week of December |
| Warehouse Facility Closing & Funding | 2nd week of December |

DRAFT

**From:** Anna Strathy
**To:** Ronald Kwan; Ken Kandeepan; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm
**Date:** Monday, September 25, 2017 1:38:48 PM

---

Hi Ron, I just got off the phone with James.
Looks like James will start off with his presentation. The Minister of Energy may want to add remarks when James is done, but more likely the Minister may just open it up to questions. The Minister, his CoS and Steen will be seated at the table, with Steen expected to answer any high level policy questions. OFA will be seated behind them, against the wall, to answer any more technical questions.
Let me know if there are any other questions.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 12:06 PM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm
Thanks Anna. Who will be expected to speak to this? In past TBs, the submitting Ministry has spoken to the submission, such as the Minister – though, at times, the TBS analyst might also do much of the talking, if so agreed to, with the submitting ministry there to provide statements in support or respond to questions.
Has there been any discussion on that choreography between TBS, Energy and Finance/OFA?
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:58
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
And just to close the loop – I'm told that OFA and Energy staff will be invited into the TB Boardroom for this "in camera" item. The Minister of Energy, his CoS and Steen Hume will be in attendance.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:54 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
Hi Anna,
Thanks.
While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 12:06:25 PM |

---

Thanks Anna. Who will be expected to speak to this? In past TBs, the submitting Ministry has spoken to the submission, such as the Minister – though, at times, the TBS analyst might also do much of the talking, if so agreed to, with the submitting ministry there to provide statements in support or respond to questions.
Has there been any discussion on that choreography between TBS, Energy and Finance/OFA?
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:58
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm
And just to close the loop – I'm told that OFA and Energy staff will be invited into the TB Boardroom for this "in camera" item. The Minister of Energy, his CoS and Steen Hume will be in attendance.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:54 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
Hi Anna,
Thanks.
While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm
Hi Anna,
Do we have the final copy of James' Assessment Note?
Thanks,
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>;

Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High
Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:58:26 AM |

---

And just to close the loop – I'm told that OFA and Energy staff will be invited into the TB Boardroom for this "in camera" item. The Minister of Energy, his CoS and Steen Hume will be in attendance.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:54 AM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Thanks.

While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.

Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm

**Importance:** High

Hi everyone,

TB/MBC today starts at 3:00pm.

The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.

Please have attendees ready.

James

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:56:08 AM |
| **Attachments:** | 3-CPFB Briefing Note_Provincial Protection Agreement v4.doc |

Hi Ron, of course, please see attached.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:54 AM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Thanks.

While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.

Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm

**Importance:** High

Hi everyone,

TB/MBC today starts at 3:00pm.

The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.

Please have attendees ready.

James

Provincial Protection and Assurances Agreement
Treasury Board/Management Board of Cabinet (TB/MBC) Submission

## ISSUE

To seek Minister's approval of a joint Ministry of Finance and Ministry of Energy TB/MBC submission to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation (OPG) Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act*, *2017*, ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

This item is tracking for TB/MBC on September 25, 2017, with expedited Cabinet ratification requested for September 27, 2017.

## KEY POINTS

- On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP), to lower electricity bills by 25%, on average, for a typical residential consumer, starting in the summer of 2017 and holding increases to the rate of inflation for four years.

- In order to deliver on the hydro rate reduction under the OFHP, the Ministry of Finance (MOF) and Ministry of Energy (MOE) are coming forward with a proposed Provincial Protection Agreement ("protection agreement") that supports the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would take over the funding obligations of the Financing Entity.

- OPG financial advisors have indicated that without provincial protection against legislative, judicial and organizational risks, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers.

- The protection agreement would last until all obligations of the Financing Entity that are "guaranteed" under the protection agreement are paid, estimated at 30 years.

- Activation of the protection agreement would be limited to certain triggering events, such as a change in legislation, court decision, organizational change to the Independent Electricity System Operator (IESO) or change in the electricity market that would impede the ability of the Financing Entity to receive payments on its investment interest.

- The protection agreement creates a contingent liability for the Province that would be presented in the Notes to the Consolidated Financial Statements in the Public Accounts of the Province.

- This request is not expected to have a fiscal impact and there is no offset required.
- The Term Sheet, which sets out the parameters of the protection agreement, has been developed in consultation with OPG, OPCD, OFA, MOF Legal and external legal counsel. Details of the Term Sheet can be found in Appendix B.
- Provincial Law would govern the agreement, and investors from the Canadian market place would participate in the debt offering.
- The Minister of Finance's approval under s. 28 of the *Financial Administration Act* is required before MOF and MOE seek an OIC for a protection agreement, to enter into a guarantee or indemnity that would increase the contingent liabilities of the Province. A request is included with this submission for the Minister of Finance's approval under s. 28 of the *Financial Administration Act*.
- At the time of the OFHP announcement in March 2017, the MOE provided a forecast of the immediate reduction of about $2.5 billion per year on average over the first 10 years. MOE will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.
- MOE, OFA, and MOF Legal have reviewed and provided sign-off on the submission.
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the OPG Financing Entity accesses the U.S. market. It is likely that investors would require additional compensation if the support agreement is triggered.
- Communications under the government's FHPA would continue to be led by MOE.
- This submission is moving forward on a priority basis to the September 25, 2017 TB/MBC meeting to ensure that OPG is able to complete their initial financing for the Trust by calendar year-end.

## FISCAL IMPLICATIONS

This request is not expected to have a fiscal impact. No offset is required.

In the event the protection agreement is triggered;

- the contingent liability would become a liability for the Province.
- the Province's net debt will most likely increase by an amount equal to the contingent liability for debt outstanding at that point in time, which could peak at an estimated $20 billion, dependent on a variety of factors.

- the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due. The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

- the Province's IOD expense while difficult to estimate, under the worst case scenario would be the Province assuming the debt at its peak. If so, the IOD expense may increase between $0.8 and $1.0 billion per year depending on the interest rate at which the financing entity will be able to borrow at. Interest on Debt (IOD) would be reported by Treasury Program (OFA) and consolidated under MOF in Volume 1 of the Public Accounts.

- Debt incurred to the benefit of the ratepayer becomes the responsibility of the taxpayer.

## KEY RISKS

Should the protection agreement not be approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from the Independent Electricity System Operator (IESO) or the cost of financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of liability would increase over the duration of the OFHP and could peak at an estimated $20 billion of debt, dependent on a variety of factors including principal and accumulated interest.

Should the protection agreement be triggered, and the Province becomes responsible for the obligation to service and pay down the debt. The magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form or not, and the incremental IOD expense would impact the government's fiscal plan.

Communications would be managed through MOE with a low profile approach that includes on a need to know basis, and support as needed.

## BACKGROUND

As part of the OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize and modernize Ontario's electricity system. This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity

infrastructure. To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time.

Under the OFHPA, which enables the GA Refinancing, the IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account and deems this under-collected amount to be a “Regulatory Asset”. The OFHPA provides for the IESO to sell all or a portion of the regulatory asset. Under OFHPA a Financing Entity (an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and indirectly, the Province) from capital markets. OPG has advised that without adequate protection against legislative and judicial risk, the debt would not be financeable.

As a result, OPG through the Ontario Financing Authority is requesting that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

## SUBMISSION CONTENTS

MOF Internal Documents:

1. DMO Approval Form
2. Program Area and Legal Approval Form
3. CPFB Briefing Note – Provincial Protection Agreementv3
4. Fast Track to Cabinet Request – Provincial Protection Agreement
5. Slide Deck – MOF Briefings_OFHP Provincial Protection Agreement_v11
6. Minister Section 28 approval for FHP Protection Agreement

TB/MBC Submission:

7. TB20 Application Form – Provincial Protection Agreement Ministry of Energy
8. TB20 Application Form – Provincial Protection Agreement
9. TB20 Submission – Provincial Protection AgreementV10
10. Order in Council – MOF.2017.FairHydroPlanOFA.v1ENG_and_FRE

## DUE DILIGENCE

CPFB works with the program, ministry colleagues, and the central agencies to review submission for integrity, completeness, accuracy of information and consistency with government/ministry directives, policies and procedures. Information in this submission is reflective of and consistent with prior committee decisions, budget announcements, and government/ministry priorities.

## RECOMMENDATION

Minister's approval of a joint Ministry of Finance and Ministry of Energy TB/MBC submission to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation (OPG) Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act*, *2017*, that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

## APPENDICES

Appendix A: Proposed Minute
Appendix B: Term Sheet

PREPARED BY/PHONE: ANTHONY REISS, 905-433-5927
APPROVED BY/PHONE: LINDA GIBNEY, 905-433-5637
BRANCH: CORPORATE PLANNING & FINANCE BRANCH
DATE: September 20, 2017

## Appendix A: Proposed Minute

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

i. Approve that the Minister of Finance and Minister of Energy, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act*, *2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine;

ii. Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

    a. to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and
    b. to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## Appendix B: Term Sheet

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in |

| | |
|---|---|
| | Part III of the *Legislation Act, 2006*);<br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.
[2] Under consideration to assess the marketability implications of this phrase.
[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:54:24 AM |

---

Hi Anna,

Thanks.

While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.

Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm

Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm.
However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.

James

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:47:33 AM |
| **Attachments:** | 4 RAN MOF ENERGY -Provincial Protection Agreement v6.doc |

---

Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| | **Ministry:** | Energy & Finance |
| | **Meeting Date:** | September 25, 2017 |
| | **Agenda Class:** | Discussion (In-Camera) |
| | **Last reviewed by:** ENERGY TB/MBC May 9, 2017 | **Tracking to:** Fast Track Cabinet (September 27, 2017) |

| **SUBMISSION TITLE:** | Provincial Protection Agreement<br>(Supports Ontario's Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. (OPG). | *Approve* |
| Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Fair Hydro Plan Act, 2017(FHPA).*<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council (OIC), in accordance with section 5 of the *Fair Hydro Plan Act, 2017 (FHPA)* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |
| Recommended program base | 0.0 | 0.0 | 0.0 |
| Offset Recommended | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the *Fair Hydro Plan Act, 2017*, (FHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected from consumers.

- IESO will incur a cash shortfall, as the amounts collected from the consumers of electricity (collected by local distribution companies) will be reduced, but the amounts paid to the generators of electricity will remain at the market and/or contractual rates.

The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

The OFHPA provides for IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the FHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the FHPA) will he the right, but not the obligation to purchase the regulatory asset, effectively financing the shortfall generated by the reduction in amounts collected from eligible ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity will borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets.

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this through Provincial assurance and guarantee provisions was recommended in a May 2017 TB/MBC item reviewing proposed FHPA.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance and external advisors recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the FHPA/related regulations or new legislation that materially and adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid; and
- A change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that materially and adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations.

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the contingent liability would increase over the duration of Ontario's Fair Hydro Plan (OFHP) and peak at approximately $20B of debt (final cost forecasts TBC), including principal and accumulated interest.

- In the event the protection agreement is triggered, the Province's net debt would be expected to

increase by an amount equal to the contingent liability for the debt outstanding at that point in time.

- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments related to derivatives agreements and for service providers that the Province will be required to make. The fiscal impact of the increased interest payments will depend on the circumstances of the change (e.g. will the amounts continue to be recovered from the ratepayers through the clean energy adjustment as provided for under the FHPA).

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements (e.g. the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt) and to service providers.

- The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.

This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time, and the Province may incur an expense equal to the amount of the debt.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. The worst case scenario would be the Province assuming the debt at its peak at which point interest on debt (IOD) expense could increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required and may require a change in legislation.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not.

- For example, if the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments, albeit not necessarily in the same fiscal period; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense as well as any continued impact of reduced electricity rates would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.

- Debt incurred to benefit the ratepayer could become the responsibility of the taxpayer.

TBS staff note the protection agreement, assuming the Board proceeds with the request, would be approved prior to the commercial agreements being finalized. Also from an accounting perspective, previously provided opinions/memos from KPMG re: IESO and EY re: OPG have yet to be updated.

*Implementation*
The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the two Ministers seeking the OIC in the form attached to the final TB/MBC Submission.

The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

MOF Legal indicates the intention is that the protection agreement signed by the two Ministers would apply to all subsequent agreements entered into by the Financing Entity subject to compliance with the terms and conditions set out in the protection agreement. A section 28 approval of the protection agreement should cover these subsequent agreements. This may change as the protection agreement and the terms and conditions of the process have not been determined by the Ministers.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 21, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE

Approve the Ministries plan for implementing provisions of the *Fair Hydro Plan Act, 2017 (FHPA)* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

In this regard,

i) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet included in the TB/MBC Submission, and subject to such revisions that the two ministers acting together may determine.

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the FHPA, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

iii) Direct the Ministry of Energy to report back to TB/MBC with final accounting/ legal/financial risk opinions.

# APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM *FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

# APPENDIX D: NON-BINDING TERM SHEET

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); |

| | |
|---|---|
| | (5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

# APPENDIX F: RISK UPDATE

The current submission, Provincial Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" as part of risk mitigating strategy.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy; Mike Manning; Ronald Kwan |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 11:41:54 AM |

Thanks will aim to be there at 2.45

**From:** Anna Strathy
**Sent:** Monday, September 25, 2017 11:41 AM
**To:** Ken Kandeepan ; Mike Manning ; Ronald Kwan
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

**From:** Ronald Kwan
**To:** Anna Strathy; Ken Kandeepan; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm
**Date:** Monday, September 25, 2017 11:41:54 AM

---

Hi Anna,
Do we have the final copy of James' Assessment Note?
Thanks,
Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan ; Mike Manning ; Ronald Kwan
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: FHP Item may go earlier than 3:20pm |
| **Date:** | Monday, September 25, 2017 1:39:30 PM |

Thanks Anna.
Ron

**From:** Anna Strathy
**Sent:** September-25-17 13:39
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Ron, I just got off the phone with James.
Looks like James will start off with his presentation. The Minister of Energy may want to add remarks when James is done, but more likely the Minister may just open it up to questions. The Minister, his CoS and Steen will be seated at the table, with Steen expected to answer any high level policy questions. OFA will be seated behind them, against the wall, to answer any more technical questions.
Let me know if there are any other questions.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 12:06 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Thanks Anna. Who will be expected to speak to this? In past TBs, the submitting Ministry has spoken to the submission, such as the Minister – though, at times, the TBS analyst might also do much of the talking, if so agreed to, with the submitting ministry there to provide statements in support or respond to questions.
Has there been any discussion on that choreography between TBS, Energy and Finance/OFA?
Ron

**From:** Anna Strathy
**Sent:** September-25-17 11:58
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

And just to close the loop – I'm told that OFA and Energy staff will be invited into the TB Boardroom for this "in camera" item. The Minister of Energy, his CoS and Steen Hume will be in attendance.

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:54 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,
Thanks.
While it shouldn't come up, CQS had done its own note, provided at the Minister's briefing last week. Could we get a copy of that note too, for completeness of our records on this.

Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:48
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Attached is the latest version I've received. I'm confirming with TBS that it's the final version.

---

**From:** Ronald Kwan
**Sent:** Monday, September 25, 2017 11:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: FHP Item may go earlier than 3:20pm

Hi Anna,

Do we have the final copy of James' Assessment Note?

Thanks,

Ron

---

**From:** Anna Strathy
**Sent:** September-25-17 11:41
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** FW: FHP Item may go earlier than 3:20pm
**Importance:** High

Per below, FHP item could go as early as 3:05pm. Best to be there before 3:00pm.

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Monday, September 25, 2017 11:29 AM
**To:** Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>; Long, Anne-Marie (MOF) <Anne-Marie.Long@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
**Subject:** FHP Item may go earlier than 3:20pm
**Importance:** High

Hi everyone,
TB/MBC today starts at 3:00pm.
The Provincial Protection Agreement (PPA) item is scheduled 3rd at 3:20pm. However, the second item could potentially have a quorum issue, so the PPA could go earlier – 3:05pm.
Please have attendees ready.
James

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Gadi Mayman; Anna Strathy |
| **Subject:** | RE: FHP Support Agreement OIC Draft |
| **Date:** | Thursday, September 07, 2017 6:32:03 PM |

Hi all,

Torys has invited Steve, MOF LSB and Energy LSB to a call tomorrow morning for the lawyers to go over the changes that were made to the term sheet so that they can better understand them. We think it would be helpful to discuss the wording with them directly so Toby and I propose to join the call unless there any concerns about it. It may be constructive for us to discuss the wording directly with Torys and then we would report back to you with on the call. We might also get a better idea of how the guarantee timing will fit in with the timing of the proposed debt issuances. Please let us know if you have any concerns about this.

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: September-07-17 5:53 PM
To: Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA)
Cc: Hanslep, Malle (MOF)
Subject: FHP Support Agreement OIC Draft

Please find attached, for your review and comment, a draft OIC authorizing the Minister of Finance and the Minister of Energy to give a guarantee/indemnity under the Fair Hydro Plan Act.

This draft gives a lot of authority to the Ministers to determine the scope and content of the guarantee. It would be helpful to consider whether additional terms and conditions (including a maximum amount or other limitations) should be included.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON
M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Anna Strathy |
| **Subject:** | RE: FHP Support Agreement OIC Draft |
| **Date:** | Friday, September 08, 2017 9:26:23 AM |

---

Thanks Gadi.

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: September 7, 2017 9:46 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Strathy, Anna (OFA)
Subject: Re: FHP Support Agreement OIC Draft

Thanks, Malle. I think it would be very helpful for you and Toby to be on the call to, hopefully, prevent this discussion from going down unnecessary rabbit holes. My concern is that, to use a term that I often hear lawyers use in a different context, time is of the essence, and it's important that Torys isn't simply using this as an opportunity to extract even more billable hours from what has already been a very profitable file for them.

I had a discussion with OPG's CFO, Ken Hartwick this morning and he told me that they were satisfied with the term sheet, so I don't know why, if their client is satisfied, Torys feels the need to prolong this discussion. To meet the timelines to get this through both our ministries and then have the submission signed by the two DMs and Ministers in time to meet TB's deadlines, this has to be ready to go to CQSD by the end of the day tomorrow, so I don't want to enter into a new round of negotiations with Torys.

Thanks again, Malle. I really appreciate having you and Toby on our side.

Gadi

Original Message
From: Hanslep, Malle (MOF)
Sent: Thursday, September 7, 2017 6:32 PM
To: Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Gadi Mayman; Anna Strathy
Subject: RE: FHP Support Agreement OIC Draft

Hi all,

Torys has invited Steve, MOF LSB and Energy LSB to a call tomorrow morning for the lawyers to go over the changes that were made to the term sheet so that they can better understand them. We think it would be helpful to discuss the wording with them directly so Toby and I propose to join the call unless there any concerns about it. It may be constructive for us to discuss the wording directly with Torys and then we would report back to you with on the call. We might also get a better idea of how the guarantee timing will fit in with the timing of the proposed debt issuances. Please let us know if you have any concerns about this.

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: September-07-17 5:53 PM
To: Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA)
Cc: Hanslep, Malle (MOF)

Subject: FHP Support Agreement OIC Draft

Please find attached, for your review and comment, a draft OIC authorizing the Minister of Finance and the Minister of Energy to give a guarantee/indemnity under the Fair Hydro Plan Act.

This draft gives a lot of authority to the Ministers to determine the scope and content of the guarantee. It would be helpful to consider whether additional terms and conditions (including a maximum amount or other limitations) should be included.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON
M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** RE: FHP
**Date:** Friday, October 20, 2017 1:02:21 PM

---

Yes sounds good.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** October 20, 2017 1:02 PM
**To:** Hanslep, Malle (MOF)
**Cc:** Whitfield, Tobias P. (MOF)
**Subject:** Re: FHP

Hi Malle. OK if I call you at around 2:00?
Mike

Sent from my iPhone

On Oct 20, 2017, at 12:21 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Mike,
> When you have a minute today, we would like to discuss the FHP file with you. Thanks.
> I just have a meeting from 1 to 2, otherwise free.
> Malle

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Usman Zahid; Gadi Mayman |
| **Subject:** | RE: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation |
| **Date:** | Monday, October 16, 2017 3:51:40 PM |
| **Attachments:** | REG-11654_ID51067_LRC_CBN-DRAFT-V7_Markup2.docx |

Hi Anna,

A few suggested comments / edits, as attached, including edits to the fiscal impact paragraph, which are a little more elaborate than Ken's suggested edits.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 08:04
**To:** Mike Manning ; Ken Kandeepan ; Carlos Yep ; James Devine ; Ronald Kwan ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF)
**Cc:** Usman Zahid ; Gadi Mayman
**Subject:** Fwd: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Good morning,
Attached, for your review and comment, is the Cabinet note for the OFHP Fee Regs tracking direct to Cabinet on Wednesday. We've been asked to provide comments by 4pm today.
Malle, Toby, I'm sharing with you as well in case this hasn't made its way to you.
Thank you, Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 16, 2017 at 7:56:52 AM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Birks, Ryan (MOF)" <Ryan.Birks@ontario.ca>
> **Subject: FW: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation**
>
> Hi all,
> Could you please have your teams review and provided comments to me **no later than 4:00pm**?
> Thanks,
> Dave
>
> **From:** Wittman, Nancy (CAB)
> **Sent:** October 16, 2017 7:56 AM
> **To:** McLean, David (MOF)
> **Subject:** Fact Check: Draft LRC CBN Fair Hydro Plan Implementation
>
> Hi
> ENERGY is tracking Direct to Cabinet on Oct 18 (TBC) with proposed regulatory

amendments to support Ontario Fair Hydro Plan implementation.
Can you please have the team review the attached draft LRC CBN for fact check by end of day.
The CBN is based on draft ministry materials and is being sent to ENERGY for review concurrently. As such, there are questions and placeholders for ENERGY to address throughout the note.
My usual apologies for the short turn around - which seems completely meaningless given that it is for every single note…
Thx. Nancy

**CABINET BRIEFING NOTE**
**AND LRC RECOMMENDATION**

Energy
**Fair Hydro Plan Implementation**

**DRAFT**

**Based on draft materials**

| | | | | |
|---|---|---|---|---|
| Cabinet (info)<br>Feb 15, 2017 | TB/MBC and Cabinet<br>March 1, 2017 | Announcement<br>March 2, 2017 | TB/MBC<br>May 9, 2017 | Cabinet<br>May 10, 2017 |
| Introduction<br>May 11, 2017 | Royal Assent<br>June 1, 2017 | TB/MBC<br>June 27, 2017 | Cabinet (DTC)<br>June 14, 2017 | Cabinet (DTC)<br>June 27, 2017 |
| Program Effective Date<br>July 1, 2017 | TB/MBC<br>September 25, 2017 | Cabinet<br>September 27, 2017 | Cabinet (DTC)<br>October 18, 2017 (TBC) | |

## Summary of Proposal

The proposed regulations are consistent with Cabinet direction.

**Context for Decision:**

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). One component of the OFHP is refinancing a portion of the Global Adjustment (GA). The implementing legislation for GA refinancing, the *Ontario Fair Hydro Plan Act, 2017* (OFHPA), was introduced May 11, 2017 and received Royal Assent on June 1, 2017. The OFHP expands the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) and puts in place mechanisms including appropriate payment settlement and cost-recovery authorities for and through the IESO to manage the deferred GA costs.

On June 14, 2017 new regulations were created under the OFHPA that support calculations related to GA refinancing and one regulation was amended to authorize IESO to borrow to fund the regulatory asset as part of the financing structure. On June 27, 2017 a new regulation was created under the OFHPA that details the roles and responsibilities of the Financial Services Manager (i.e., OPG), IESO and OEB.

**Commented [MK(1]:** Is this the reg that is being amended?

**Commented [JK2R1]:** The following section confirms this.

**Proposal:**
This proposal is the next step in the implementation of GA refinancing. The Ministry of Energy (ENERGY) is proposing amendments to O.Reg. 206/17 (i.e., general regulation) under the OFHPA that would:

1. Enable OPG, as Financial Services Manager (FSM) to establish and charge fees, once approved by the OEB, for the services it provides as part of the government's approach to GA refinancing.

2. Enable OPG, as FSM to recover "carrying costs" (i.e., fees and interest amounts) from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021.

**Why does Ontario need these changes? Why now?**

Addressing rising electricity prices is among the highest priorities for Ontarians. The OEB adjusted rates to reflect the OFHP reductions partially on May 1, 2017 and fully on July 1, 2017. The IESO has been managing the GA deferral with its existing resources since reductions have been in place. As such, it is important for the proposed amendments to take effect in a timely manner to enable OPG to go to market to fund the GA deferral by transferring the regulatory asset to the OPG financing entity. ENERGY understands that OPG intends to go to market in November 2017 and is currently in preliminary discussions with rating agencies with respect to timing and other aspects of its FSM role.

**How will this proposal impact Ontario?**

Under the OFHPA, which enables GA refinancing, electricity bills for a typical residential consumer have been reduced by 25 percent effective July 1, 2017, compared to what they would have been without the initiatives included in the OFHP. The OFHPA also provides that further increases to electricity bills for a typical consumer are to be held to the rate of inflation for four years.

The proposed amendments would support the implementation of the OFHP, which affects all specified consumers to whom the "Fair Adjustment" applies. Prescribed consumers under the OFHP include residential consumers, farms, small businesses, condominiums, long-term care homes and co-operative housing. These are primarily consumers eligible for the Regulated Price Plan (RPP), and aligns with the eligibility under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA). ENERGY notes that up to 500,000 small businesses and farms are benefitting from GA refinancing.

**What is the expected cost to government?**

The GA refinancing structure, ~~w~~as designed, ~~to~~ results in: (1) an increase in provincial gross debt (to finance the equity injection in OPG), with no increase to net debt, as the gross debt increase is offset by an increase in the government's assets in the form of a higher equity investment in OPG~~equivalent in regulatory assets resulting in no change in net debt~~, and (2) an increase in interest on debt paid by the P~~p~~rovince, assumed in the fiscal plan as exactly offset by higher earnings from OPG, resulting in no assumed impact on the annual ~~deficit~~Provincial fiscal balance of the P~~p~~rovince. The actual impact will depend on actual IOD and OPG net income impacts. The proposed regulations would

**Commented [TR(3]:** Is TB/MBC approval required?

**Commented [TR(4]:** Are the proposed amendments expected to have any ratepayer impacts, for example through FSM fees? Can estimated impacts be provided?

**Commented [TR(5]:** Can estimated fees range that the FSM could charge be provided?

support the implementation of this refinancing structure. According to ENERGY, the proposed amendments would not involve a [material?] direct [net?] fiscal impact on the finances of the ~~p~~Province.
Allowing OPG to recover carrying costs from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021, is expected to have no net impact to specified consumers within this period. As with other costs under the scheme, these IESO costs would be deferred to future collection from specified consumers on and after May 1, 2021.

**What are the key steps to deliver this proposal?**

The proposed regulations would take effect [NTD: placeholder for timelines].

Amendments would provide further detail on the roles and responsibilities of the OPG, IESO and OEB with respect to GA refinancing. Key steps for the delivery of this proposal include:

- OPG to produce Financing Plans that set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA).
- IESO to record deferral amounts in relation to the establishment of the regulatory asset.
- OPG financing entity to begin purchasing monthly regulatory assets from the IESO November 2017 and work with lenders and credit rating agencies in establishing vehicles for securitizing (selling) of investment asset interests.
- OPG management fees and interest costs to be recovered from IESO July 1, 2017 to April 30, 2021.
- OPG management fees and interest costs to be recovered by specified consumers through Clean Energy Adjustments (CEAs) on and after May 1, 2021.
- OEB to review OPG management fees as per the methodology established in regulation and determine the rates that will be applied to specific consumers beginning in 2018/2019.

**How will the changes be communicated?**

[NTD: CO Comms to provide]

## Notes and Recommendation from LRC

N/A – item proceeding direct to Cabinet.

## Cabinet Office Analysis

The Ministry of Energy's (ENERGY) proposed amendments to O.Reg. 206/17 are consistent with Cabinet direction provided for the implementation of GA refinancing as

**Commented [TR(6]:** Is ENERGY requesting an exemption from the Twice Annual Effective Date?

**Commented [TR(7]:** Please confirm

**Commented [JK8R7]:** Timing of recovery and mechanisms are clarified in the later sections for these bullets.

**Commented [TR(9]:** CO Comms to review

DRAFT

part of Ontario's Fair Hydro Plan (OFHP) on March 1, 2017. The *Fair Hydro Act, 2017* (OFHPA) establishes the framework to refinance a portion of current Global Adjustment (GA) costs as part of the OFHP. The OFHP reduced a typical residential consumer's electricity bills by 25 percent, on average, effective July 1, 2017, compared to what they would have been without the initiatives under the Plan. The refinancing methodology defers a portion of current GA costs to future ratepayers in order to allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (~~i.~~e.g., phase-out coal) and modernize Ontario's electricity system (~~i.~~e.g., build and maintain a reliable electricity system).

**Refinancing Structure**

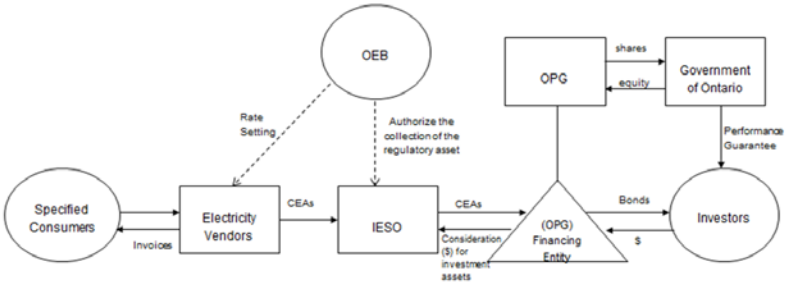
Under the GA refinancing structure, the Independent Electricity System Operator (IESO) records the GA cost recovery deferral as a "regulatory asset" ~~(regulated by the Ontario Energy Board (OEB))~~ to be collected at a future time from "specified consumers" (in rates regulated by the Ontario Energy Board (OEB)) ("the Fair Adjustment" and "IESO deferral"). As a result, specified consumers will receive a reduction in electricity rates from July 1, 2017 to June 30, 2018. IESO may then sell the regulatory asset, at which time it becomes an "investment asset~~.~~" in the OPG financing entity.

The Minister of Energy, following the principles in the Act and regulations, will regularly calculate the "Fair Allocation Amount" to ensure a proper alignment of the allocation of the intergenerational costs and benefits in relation to each of the next 60 six month "reference periods." Based on the Fair Allocation Amount, the Financial Services Manager (OPG), through financing entities, will debt finance a portion of the GA costs. The financings will be backed primarily by the clean energy adjustments payable by specified consumers. The clean energy adjustments will track the actual payment obligations incurred by the financing entities when they become due and payable.

OPG, in its role as the Financial Services Manager (FSM), will calculate the aggregate clean energy adjustment payable in each month of the reference period, and, to ensure intergenerational fairness, these amounts will be managed to ensure consistency with the fair allocation amounts. OEB will calculate the rates at which the clean energy adjustment will be collected from specified consumers.

To recoup the costs associated with the fair adjustment, consumers will be invoiced the clean energy adjustment on their electricity bills through existing IESO and Local Distribution Companies' (LDC) processes, which will be channeled through to pay each financing entity's related funding obligations. The clean energy adjustments will appear on customer's bills once repayment of the accumulated debt begins.

DRAFT




**Note:** CEAs are "clean energy adjustments".

**Proposal**

In its capacity as FSM under the GA refinancing structure, OPG, or the financing entity[?], will take on the risk and responsibility of financing the deferral, with the financing entity ~~by~~ purchasing monthly regulatory assets from IESO. OPG will finance these purchases through a combination of an equity investment by the Province and external private sector financing. The proposed regulatory amendments would enable OPG to go to market to fund the GA deferral:

Management Fees: As FSM, OPG is allowed to charge a management fee for its services made up of a base fee, variable fee and Third-party costs (e.g., banking fees). The proposed amendments to O.Reg. 206/17 would establish a methodology for calculating and reviewing FSM management fees. OPG's base fee for 2017/18 would be established at 7.5 basis points. The OEB would be responsible for determining FSM management fees for future years by reviewing fees for comparable services.

Carrying Costs: OPG must recover management fees and interest costs (i.e., "Carrying Costs") beginning July 1, 2017 to ensure the implementation of GA refinancing satisfies accounting requirements. These costs however, cannot be recovered from specified consumers during the "inflationary cap period" from July 1, 2017 to April 30, 2021 in order for GA refinancing to proceed as planned under the OFHPA without ~~incurring~~ significantly increased costs passed through to the specified ratepayers. The proposed amendments to O.Reg. 206/17 would enable the recovery of these costs by OPG from the IESO during this period. These costs would form part of the variance account for future collection from specified consumers and would be recovered through the CEAs on and after May 1, 2021.

**Commented [TR(10]:** Please confirm and provide rationale for this fee structure

**Commented [TR(11]:** Would the OEB also have a role in determining fees beyond the base fee? Would fees be determined through the OEB's hearing process?

**Commented [TR(12]:** Please confirm

**Commented [TR(13]:** Please confirm

**Commented [TR(14]:** Please confirm total expected amount for costs during this period, $500k-1M?

**Stakeholder response:**

ENERGY consulted with representatives from the OEB, IESO an OPG, as well as external advisors (i.e., lawyers and accountants) and other ministries as appropriate on the proposed regulatory amendments. Consistent with the approach taken to develop and implement the OFHPA, a steering committee chaired by ENERGY's Deputy

Minister met bi-weekly on the status of the proposed regulatory amendments. The committee consists of senior executives from ENERGY, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, Ontario Financing Authority, OPCD, OPG, OEB and IESO.

General public (Neutral) – Generally supports the GA refinancing initiative, but also question the longer term implications. Some individuals and organizations perceive the GA smoothing as unduly burdening future generations.

OPG-

OEB-

IESO-

**Risks:**

OPG/SPV Mechanism

There are several risks associated with the OPG/SPV mechanism that remain. OPG/SPV could continue to be criticised for not having an appropriate level of accountability to the government or the public, due to the limited amount of government [or OEB?] control of the entity, and future rate increases. However, this is seen by the markets as an essential component for the structure to operate and the government remains the sole shareholder of OPG.

Proposed regulations build on a complex financing structure that is unique to Canada—uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise has been required to get to this point. Financing is still not certain.

Legal

In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. Legal risk arises if it becomes apparent that the ~~G~~government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

**Linkages:**

**Commented [TR(15]:** What is OPG's view on the proposed amendments?

**Commented [TR(16]:** What is the OEB's view on the proposed amendments?

**Commented [TR(17]:** What is the IESO's view on the proposed amendments?

**Commented [TR(18]:** Are there any risks associated with the proposed management fees, for example rate impact or perception?

**Commented [TR(19]:** Are there any accounting risks associated with the proposed amendments?

**Commented [TR(20]:** Are the amendments expected to have an impact on the financeability/saleability of the investment asset?

**Commented [TR(21]:** Do the proposed amendments introduce any new risks with respect to the OPG/SPV mechanism?

**Commented [TR(22]:** Does the role of the OEB in overseeing OPG fees take into account the risk that OPG could make the case to be exempted from compensation rules because there is no national comparator for this aspect of their work?

DRAFT

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in October / November 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP is intended to balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity Consumers Act, 2016*, (ORECA) put in place a rebate for an amount equivalent to the 8% provincial portion of the HST for eligible residential, small business customers and farms, beginning January 1, 2017.

Rural and Remote Rate Protection (RRRP) and Delivery Rate Protection (DRP) – RRRP and DRP help to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province. DRP was established under the FHA and regulations approved June 14, 2017. Both the expanded RRRP and DRP were implemented July 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users, which was earlier than previously estimated. For all other consumers the DRC will be removed by April 2018, also earlier than previously estimated.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. ~~As part of OFHP,~~ ICI eligibility has been expanded several times, and was most recently expanded, as part of the OFHP, to allow for the participation of the manufacturing and, e.g., greenhouse sectors with an average month peak demand down to a range of greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI provides a benefit to all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to

$2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

**Other Jurisdictions:**
According to ENERGY, no other jurisdictions have comparable legislative and regulatory frameworks. The U.S. does have examples of securitizations involving single distribution companies, but none of the transactions would have approached the level of complexity involved with the present OFHPA initiative.

**Terms you need to know**

- **Global Adjustment (GA) –** The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.
- **Local Distribution Companies (LDCs) –** Local electricity utilities (e.g., Hydro Ottawa, Toronto Hydro, etc.), responsible for distributing power from transmission lines to people's homes and to businesses and institutions. ~~(e.g., Hydro Ottawa, Toronto Hydro, etc.)~~ LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive OEB approval to charge a distribution rate.
- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Ontario Power Generation (OPG) –** A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Independent Electricity System Operator (IESO) –** An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Ronald Kwan; Tobias P. Whitfield (MOF) |
| **Cc:** | Usman Zahid; Gadi Mayman |
| **Subject:** | RE: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation |
| **Date:** | Monday, October 16, 2017 3:42:04 PM |

Hi Anna,
Thanks for this. I only had one comment on this which is on p. 4, the chart of the refinancing structure seems a bit out of date as it references a “performance guarantee” from the Government of Ontario to the Investors and doesn’t mention the proposed “protection agreement” anywhere in the text. However, perhaps this is not the focus of this regulation.
Malle

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 16, 2017 8:04 AM
**To:** Manning, Mike (OFA); Kandeepan, Ken (OFA); Yep, Carlos (OFA); Devine, James (OFA); Kwan, Ronald (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Zahid, Usman (OFA); Mayman, Gadi (OFA)
**Subject:** Fwd: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Good morning,
Attached, for your review and comment, is the Cabinet note for the OFHP Fee Regs tracking direct to Cabinet on Wednesday. We’ve been asked to provide comments by 4pm today.
Malle, Toby, I’m sharing with you as well in case this hasn’t made its way to you.
Thank you, Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 16, 2017 at 7:56:52 AM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Birks, Ryan (MOF)" <Ryan.Birks@ontario.ca>
> **Subject: FW: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation**
>
> Hi all,
> Could you please have your teams review and provided comments to me **no later than 4:00pm**?
> Thanks,
> Dave
>
> **From:** Wittman, Nancy (CAB)
> **Sent:** October 16, 2017 7:56 AM
> **To:** McLean, David (MOF)
> **Subject:** Fact Check: Draft LRC CBN Fair Hydro Plan Implementation
> Hi
> ENERGY is tracking Direct to Cabinet on Oct 18 (TBC) with proposed regulatory amendments to support Ontario Fair Hydro Plan implementation.
> Can you please have the team review the attached draft LRC CBN for fact check by end of day.
> The CBN is based on draft ministry materials and is being sent to ENERGY for review concurrently.

As such, there are questions and placeholders for ENERGY to address throughout the note.
My usual apologies for the short turn around - which seems completely meaningless given that it is for every single note...
Thx. Nancy

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Ronald Kwan; Malle Hanslep (MOF) |
| **Cc:** | Usman Zahid; Gadi Mayman |
| **Subject:** | RE: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation |
| **Date:** | Monday, October 16, 2017 10:48:59 AM |

I have reviewed the note and we don't have any comments on this note. We also have not been involved at all in the fee discussions.
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 16, 2017 8:04 AM
**To:** Manning, Mike (OFA); Kandeepan, Ken (OFA); Yep, Carlos (OFA); Devine, James (OFA); Kwan, Ronald (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Zahid, Usman (OFA); Mayman, Gadi (OFA)
**Subject:** Fwd: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Good morning,
Attached, for your review and comment, is the Cabinet note for the OFHP Fee Regs tracking direct to Cabinet on Wednesday. We've been asked to provide comments by 4pm today.
Malle, Toby, I'm sharing with you as well in case this hasn't made its way to you.
Thank you, Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 16, 2017 at 7:56:52 AM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Birks, Ryan (MOF)" <Ryan.Birks@ontario.ca>
> **Subject: FW: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation**
>
> Hi all,
> Could you please have your teams review and provided comments to me **no later than 4:00pm**?
> Thanks,
> Dave
>
> **From:** Wittman, Nancy (CAB)
> **Sent:** October 16, 2017 7:56 AM
> **To:** McLean, David (MOF)
> **Subject:** Fact Check: Draft LRC CBN Fair Hydro Plan Implementation
> Hi
> ENERGY is tracking Direct to Cabinet on Oct 18 (TBC) with proposed regulatory amendments to support Ontario Fair Hydro Plan implementation.
> Can you please have the team review the attached draft LRC CBN for fact check by end of day.

The CBN is based on draft ministry materials and is being sent to ENERGY for review concurrently.
As such, there are questions and placeholders for ENERGY to address throughout the note.
My usual apologies for the short turn around - which seems completely meaningless given that it is for every single note...
Thx. Nancy

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Mike Manning; Ken Kandeepan; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Usman Zahid; Gadi Mayman |
| **Subject:** | RE: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation |
| **Date:** | Monday, October 16, 2017 4:03:53 PM |
| **Attachments:** | REG-11654_ID51067_LRC_CBN-DRAFT-V7_MarkupOFA.docx |

---

Thanks Ron, Malle and Ken. I've consolidated all of your comments in the attached.
I will pass this back to the DMO.
Anna

---

**From:** Ronald Kwan
**Sent:** Monday, October 16, 2017 3:52 PM
**To:** Anna Strathy ; Mike Manning ; Ken Kandeepan ; Carlos Yep ; James Devine ; Malle Hanslep (MOF) ; Tobias P. Whitfield (MOF)
**Cc:** Usman Zahid ; Gadi Mayman
**Subject:** RE: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Hi Anna,
A few suggested comments / edits, as attached, including edits to the fiscal impact paragraph, which are a little more elaborate than Ken's suggested edits.
Ron

---

**From:** Anna Strathy
**Sent:** October-16-17 08:04
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Subject:** Fwd: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Good morning,
Attached, for your review and comment, is the Cabinet note for the OFHP Fee Regs tracking direct to Cabinet on Wednesday. We've been asked to provide comments by 4pm today.
Malle, Toby, I'm sharing with you as well in case this hasn't made its way to you.
Thank you, Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 16, 2017 at 7:56:52 AM EDT
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Birks, Ryan (MOF)" <Ryan.Birks@ontario.ca>
> **Subject: FW: Fact Check: Draft LRC CBN Fair Hydro Plan Implementation**

Hi all,

Could you please have your teams review and provided comments to me **no later than 4:00pm**?

Thanks,

Dave

---

**From:** Wittman, Nancy (CAB)

**Sent:** October 16, 2017 7:56 AM

**To:** McLean, David (MOF)

**Subject:** Fact Check: Draft LRC CBN Fair Hydro Plan Implementation

Hi

ENERGY is tracking Direct to Cabinet on Oct 18 (TBC) with proposed regulatory amendments to support Ontario Fair Hydro Plan implementation.

Can you please have the team review the attached draft LRC CBN for fact check by end of day.

The CBN is based on draft ministry materials and is being sent to ENERGY for review concurrently. As such, there are questions and placeholders for ENERGY to address throughout the note.

My usual apologies for the short turn around - which seems completely meaningless given that it is for every single note...

Thx. Nancy

**CABINET BRIEFING NOTE**
**AND LRC RECOMMENDATION**

Energy
**Fair Hydro Plan Implementation**

**DRAFT**

**Based on draft materials**

| | | | | |
|---|---|---|---|---|
| Cabinet (info)<br>Feb 15, 2017 | TB/MBC and Cabinet<br>March 1, 2017 | Announcement<br>March 2, 2017 | TB/MBC<br>May 9, 2017 | Cabinet<br>May 10, 2017 |
| Introduction<br>May 11, 2017 | Royal Assent<br>June 1, 2017 | TB/MBC<br>June 27, 2017 | Cabinet (DTC)<br>June 14, 2017 | Cabinet (DTC)<br>June 27, 2017 |
| Program Effective Date<br>July 1, 2017 | TB/MBC<br>September 25, 2017 | Cabinet<br>September 27, 2017 | Cabinet (DTC)<br>October 18, 2017 (TBC) | |

## Summary of Proposal

The proposed regulations are consistent with Cabinet direction.

**Context for Decision:**

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). One component of the OFHP is refinancing a portion of the Global Adjustment (GA). The implementing legislation for GA refinancing, the *Ontario Fair Hydro Plan Act, 2017* (OFHPA), was introduced May 11, 2017 and received Royal Assent on June 1, 2017. The OFHP expands the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) and puts in place mechanisms including appropriate payment settlement and cost-recovery authorities for and through the IESO to manage the deferred GA costs.

On June 14, 2017 new regulations were created under the OFHPA that support calculations related to GA refinancing and one regulation was amended to authorize IESO to borrow to fund the regulatory asset as part of the financing structure. On June 27, 2017 a new regulation was created under the OFHPA that details the roles and responsibilities of the Financial Services Manager (i.e., OPG), IESO and OEB.

**Commented [MK(1]:** Is this the reg that is being amended?

**Commented [JK2R1]:** The following section confirms this.

**Proposal:**
This proposal is the next step in the implementation of GA refinancing. The Ministry of Energy (ENERGY) is proposing amendments to O.Reg. 206/17 (i.e., general regulation) under the OFHPA that would:

1. Enable OPG, as Financial Services Manager (FSM) to establish and charge fees, once approved by the OEB, for the services it provides as part of the government's approach to GA refinancing.

2. Enable OPG, as FSM to recover "carrying costs" (i.e., fees and interest amounts) from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021.

**Why does Ontario need these changes? Why now?**

Addressing rising electricity prices is among the highest priorities for Ontarians. The OEB adjusted rates to reflect the OFHP reductions partially on May 1, 2017 and fully on July 1, 2017. The IESO has been managing the GA deferral with its existing resources since reductions have been in place. As such, it is important for the proposed amendments to take effect in a timely manner to enable OPG to go to market to fund the GA deferral by transferring the regulatory asset to the OPG financing entity. ENERGY understands that OPG intends to go to market in November 2017 and is currently in preliminary discussions with rating agencies with respect to timing and other aspects of its FSM role.

**How will this proposal impact Ontario?**

Under the OFHPA, which enables GA refinancing, electricity bills for a typical residential consumer have been reduced by 25 percent effective July 1, 2017, compared to what they would have been without the initiatives included in the OFHP. The OFHPA also provides that further increases to electricity bills for a typical consumer are to be held to the rate of inflation~~.~~ for four years.

The proposed amendments would support the implementation of the OFHP, which affects all specified consumers to whom the "Fair Adjustment" applies. Prescribed consumers under the OFHP include residential consumers, farms, small businesses, condominiums, long-term care homes and co-operative housing. These are primarily consumers eligible for the Regulated Price Plan (RPP), and aligns with the eligibility under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA). ENERGY notes that up to 500,000 small businesses and farms are benefitting from GA refinancing.

**What is the expected cost to government?**

The GA refinancing structure, ~~w~~was designed, ~~to result~~results in: (1) an increase in provincial gross debt (to finance the equity injection in OPG~~)~~), with no increase to net debt, as the gross debt increase is offset by an increase in the government's assets in the form of a higher equity investment in OPG~~equivalent in regulatory assets resulting in no change in net debt~~, and (2) an increase in interest on debt paid by the ~~province~~Pprovince, assumed in the fiscal plan as exactly offset by higher earnings from OPG, resulting in no assumed impact to~~on~~ the Province's fiscal position~~on annual deficit~~Provincial fiscal balance ~~of the province~~.Pprovince. The actual impact will depend on actual IOD and OPG

**Commented [TR(3]:** Is TB/MBC approval required?

**Commented [TR(4]:** Are the proposed amendments expected to have any ratepayer impacts, for example through FSM fees? Can estimated impacts be provided?

**Commented [TR(5]:** Can estimated fees range that the FSM could charge be provided?

net income impacts. The proposed regulations would support the implementation of this refinancing structure. According to ENERGY, the proposed amendments would not result in any incremental ~~involve a~~ [material?] ~~direct~~ [net?] fiscal impact on the finances of the ~~provincep~~Province.
Allowing OPG to recover carrying costs from IESO during the "inflationary cap period" from July 1, 2017 to April 30, 2021, is expected to have no net impact to specified consumers within this period. As with other costs under the scheme, these IESO costs would be deferred to future collection from specified consumers on and after May 1, 2021.

**What are the key steps to deliver this proposal?**

The proposed regulations would take effect [NTD: placeholder for timelines].

Amendments would provide further detail on the roles and responsibilities of the OPG, IESO and OEB with respect to GA refinancing. Key steps for the delivery of this proposal include:

- OPG to produce Financing Plans that set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA).
- IESO to record deferral amounts in relation to the establishment of the regulatory asset.
- OPG financing entity to begin purchasing monthly regulatory assets from the IESO November 2017 and work with lenders and credit rating agencies in establishing vehicles for securitizing (selling) of investment asset interests.
- OPG management fees and interest costs to be recovered from IESO July 1, 2017 to April 30, 2021.
- OPG management fees and interest costs to be recovered by specified consumers through Clean Energy Adjustments (CEAs) on and after May 1, 2021.
- OEB to review OPG management fees as per the methodology established in regulation and determine the rates that will be applied to specific consumers beginning in 2018/2019.

**How will the changes be communicated?**

[NTD: CO Comms to provide]

## Notes and Recommendation from LRC

N/A – item proceeding direct to Cabinet.

## Cabinet Office Analysis

**Commented [TR(6]:** Is ENERGY requesting an exemption from the Twice Annual Effective Date?

**Commented [TR(7]:** Please confirm

**Commented [JK8R7]:** Timing of recovery and mechanisms are clarified in the later sections for these bullets.

**Commented [TR(9]:** CO Comms to review

DRAFT

The Ministry of Energy's (ENERGY) proposed amendments to O.Reg. 206/17 are consistent with Cabinet direction provided for the implementation of GA refinancing as part of Ontario's Fair Hydro Plan (OFHP) on March 1, 2017. The *Fair Hydro Act, 2017* (OFHPA) establishes the framework to refinance a portion of current Global Adjustment (GA) costs as part of the OFHP. The OFHP reduced a typical residential consumer's electricity bills by 25 percent, on average, effective July 1, 2017, compared to what they would have been without the initiatives under the Plan. The refinancing methodology defers a portion of current GA costs to future ratepayers in order to allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (~~i.~~e.g., phase-out coal) and modernize Ontario's electricity system (~~i.~~e.g., build and maintain a reliable electricity system).

**Refinancing Structure**

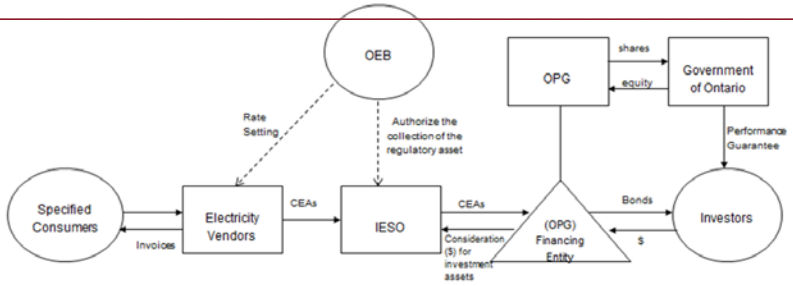
Under the GA refinancing structure, the Independent Electricity System Operator (IESO) records the GA cost recovery deferral as a "regulatory asset" ~~(regulated by the Ontario Energy Board (OEB))~~ to be collected at a future time from "specified consumers" (in rates regulated by the Ontario Energy Board (OEB)) ("the Fair Adjustment" and "IESO deferral"). As a result, specified consumers will receive a reduction in electricity rates from July 1, 2017 to June 30, 2018. IESO may then sell the regulatory asset, at which time it becomes an "investment asset~~.~~" in the OPG financing entity.

The Minister of Energy, following the principles in the Act and regulations, will regularly calculate the "Fair Allocation Amount" to ensure a proper alignment of the allocation of the intergenerational costs and benefits in relation to each of the next 60 six month "reference periods." Based on the Fair Allocation Amount, the Financial Services Manager (OPG), through financing entities, will debt finance a portion of the GA costs. The financings will be backed primarily by the clean energy adjustments payable by specified consumers. The clean energy adjustments will track the actual payment obligations incurred by the financing entities when they become due and payable.

OPG, in its role as the Financial Services Manager (FSM), will calculate the aggregate clean energy adjustment payable in each month of the reference period, and, to ensure intergenerational fairness, these amounts will be managed to ensure consistency with the fair allocation amounts. OEB will calculate the rates at which the clean energy adjustment will be collected from specified consumers.

To recoup the costs associated with the fair adjustment, consumers will be invoiced the clean energy adjustment on their electricity bills through existing IESO and Local Distribution Companies' (LDC) processes, which will be channeled through to pay each financing entity's related funding obligations. The clean energy adjustments will appear on customer's bills once repayment of the accumulated debt begins.

DRAFT




**Note:** CEAs are "clean energy adjustments".

**Proposal**

In its capacity as FSM under the GA refinancing structure, OPG, or the financing entity[?], will take on the risk and responsibility of financing the deferral, with the financing entity ~~by~~ purchasing monthly regulatory assets from IESO. OPG will finance these purchases through a combination of an equity investment by the Province and external private sector financing. The proposed regulatory amendments would enable OPG to go to market to fund the GA deferral:

Management Fees: As FSM, OPG is allowed to charge a management fee for its services made up of a base fee, variable fee and Third-party costs (e.g.~~.~~, banking fees). The proposed amendments to O.Reg. 206/17 would establish a methodology for calculating and reviewing FSM management fees. OPG's base fee for 2017/18 would be established at 7.5 basis points. The OEB would be responsible for determining FSM management fees for future years by reviewing fees for comparable services through the use of an outside expert..~~.~~

Carrying Costs: OPG must recover management fees and interest costs (i.e., "Carrying Costs") beginning July 1, 2017 to ensure the implementation of GA refinancing satisfies accounting requirements. These costs however, cannot be recovered from specified consumers during the "inflationary cap period" from July 1, 2017 to April 30, 2021 in order for GA refinancing to proceed as planned under the OFHPA without ~~incurring~~ significantly increased costs~~.~~ passed through to the specified ratepayers. The proposed amendments to O.Reg. 206/17 would enable the recovery of these costs by OPG from the IESO during this period. These costs would form part of the variance account for future collection from specified consumers and would be recovered through the CEAs on and after May 1, 2021.

**Stakeholder response:**

ENERGY consulted with representatives from the OEB, IESO an OPG, as well as external advisors (i.e., lawyers and accountants) and other ministries as appropriate on the proposed regulatory amendments. Consistent with the approach taken to develop

**Commented [AS10]:** I believe an updated diagram has been circulated which uses the more current language for the Performance Guarantee: now referred to as a Provincial Protection Agreement

**Commented [KK11]:** The base fee is explained, perhaps there should be an explanation of the variable fee as well.

**Commented [TR(12]:** Please confirm and provide rationale for this fee structure

**Commented [KK13]:** My understanding was that only the base fee will be reviewed by the OEB.

**Commented [TR(14]:** Would the OEB also have a role in determining fees beyond the base fee? Would fees be determined through the OEB's hearing process?

**Commented [TR(15]:** Please confirm

**Commented [TR(16]:** Please confirm

**Commented [TR(17]:** Please confirm total expected amount for costs during this period, $500k-1M?

and implement the OFHPA, a steering committee chaired by ENERGY's Deputy Minister met bi-weekly on the status of the proposed regulatory amendments. The committee consists of senior executives from ENERGY, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, Ontario Financing Authority, OPCD, OPG, OEB and IESO.

General public (Neutral) – Generally supports the GA refinancing initiative, but also question the longer term implications. Some individuals and organizations perceive the GA smoothing as unduly burdening future generations.

OPG-

OEB-

IESO-

**Risks:**

OPG/SPV Mechanism

There are several risks associated with the OPG/SPV mechanism that remain. OPG/SPV could continue to be criticised for not having an appropriate level of accountability to the government or the public, due to the limited amount of government [or OEB?] control of the entity, and future rate increases. However, this is seen by the markets as an essential component for the structure to operate and the government remains the sole shareholder of OPG.

Proposed regulations build on a complex financing structure that is unique to Canada—uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise has been required to get to this point. External private sector ~~F~~financing~~Financing~~ is still not certain.

Legal

In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets ~~present~~presents only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. Legal risk arises if it becomes apparent that the ~~Government~~~~G~~government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

**Commented [TR(18]:** What is OPG's view on the proposed amendments?

**Commented [TR(19]:** What is the OEB's view on the proposed amendments?

**Commented [TR(20]:** What is the IESO's view on the proposed amendments?

**Commented [TR(21]:** Are there any risks associated with the proposed management fees, for example rate impact or perception?

**Commented [TR(22]:** Are there any accounting risks associated with the proposed amendments?

**Commented [TR(23]:** Are the amendments expected to have an impact on the financeability/saleability of the investment asset?

**Commented [TR(24]:** Do the proposed amendments introduce any new risks with respect to the OPG/SPV mechanism?

**Commented [TR(25]:** Does the role of the OEB in overseeing OPG fees take into account the risk that OPG could make the case to be exempted from compensation rules because there is no national comparator for this aspect of their work?

DRAFT

**Linkages:**

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in October / November 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP is intended to balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity Consumers Act, 2016*, (ORECA) put in place a rebate for an amount equivalent to the 8% provincial portion of the HST for eligible residential, small business customers and farms, beginning January 1, 2017.

Rural and Remote Rate Protection (RRRP) and Delivery Rate Protection (DRP) – RRRP and DRP help to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province. DRP was established under the FHA and regulations approved June 14, 2017. Both the expanded RRRP and DRP were implemented July 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users, which was earlier than previously estimated. For all other consumers the DRC will be removed by April 2018, also earlier than previously estimated.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. ~~As part of OFHP,~~ ICI eligibility has been expanded several times, and was most recently expanded, as part of the OFHP, to allow for the participation of the manufacturing and, e.g., greenhouse sectors with an average month peak demand down to a range of greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI provides a benefit to all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to

$2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

**Other Jurisdictions:**
According to ENERGY, no other jurisdictions have comparable legislative and regulatory frameworks. The U.S. does have examples of securitizations involving single distribution companies, but none of the transactions would have approached the level of complexity involved with the present OFHPA initiative.

**Terms you need to know**

- **Global Adjustment (GA) –** The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.
- **Local Distribution Companies (LDCs) –** Local electricity utilities (e.g., Hydro Ottawa, Toronto Hydro, etc.), responsible for distributing power from transmission lines to people's homes and to businesses and institutions. ~~(e.g., Hydro Ottawa, Toronto Hydro, etc.)~~ LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive OEB approval to charge a distribution rate.
- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Ontario Power Generation (OPG) –** A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Independent Electricity System Operator (IESO) –** An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Subject:** | RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 12:37:43 PM |

---

No it wouldn't, but that is a good question. I have been assuming that the provincial support agreement would only apply to the 51% senior debt, but OPG just let me know that the subordinated debt will be quite a bit more expensive without a provincial support agreement. Roughly, they currently estimate that the senior debt will be priced 20-25 bps over the Province of Ontario. The subordinated they see about 100 bps back of the Senior if it has a provincial support agreement. They are now indicating, based on dealer feedback, that without a provincial support agreement, the subordinated will be about 100-200 bps more expensive if it doesn't have a provincial support agreement. Anyway, I don't think we should be expanding the support to the subordinated debt as this will greatly increase the Province's exposure. We may have to address ways to keep the subordinated more cost-effective. Thoughts appreciated.

Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 12:09 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:04
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Cc: Manning, Mike (OFA)
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Carlos Yep; James Devine; Gadi Mayman; Malle Hanslep (MOF); Mike Manning; Tobias P. Whitfield (MOF); John Kim |
| **Subject:** | RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 12:33:42 PM |

---

Adding myself to this email chain.

Anna

-----Original Message-----
From: Gadi Mayman
Sent: Friday, September 08, 2017 12:14 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Original Message
From: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Sent: Friday, September 8, 2017 12:08 PM
To: Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman
Cc: Mike Manning
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:04
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Cc: Manning, Mike (OFA)
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Cc:** | Mike Manning |
| **Subject:** | RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 12:04:09 PM |

---

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Cc:** | Mike Manning |
| **Subject:** | RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 12:04:09 PM |

---

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Anna Strathy
**Subject:** RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
**Date:** Friday, September 08, 2017 1:04:22 PM

---

Sorry Anna for not cc'ing you.

Mike

-----Original Message-----
From: Anna Strathy
Sent: Friday, September 08, 2017 12:34 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Adding myself to this email chain.

Anna

-----Original Message-----
From: Gadi Mayman
Sent: Friday, September 08, 2017 12:14 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Original Message
From: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Sent: Friday, September 8, 2017 12:08 PM
To: Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman
Cc: Mike Manning
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:04
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Cc: Manning, Mike (OFA)
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter.

Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed

the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Anna Strathy
**To:** Ronald Kwan; Ken Kandeepan; Mike Manning
**Cc:** Usman Zahid
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Wednesday, October 25, 2017 2:59:46 PM
**Attachments:** 12917730-v1-Questions (Adherence Conditions).docx

---

Hi Ron, Ken, Mike,

Toby has asked me to set up a meeting to discuss the attached discussion document drafted by Stephen Ashbourne. Toby and Malle have a preference for tomorrow morning, but I wanted to choose a time that would be convenient for all three of you. Any preferences for tomorrow morning/afternoon or Friday?

Thanks, Anna

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, October 25, 2017 1:05 PM
**To:** Anna Strathy
**Cc:** Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Anna – can you please set up a meeting to discuss the Agreement and the questions we circulated yesterday?

It would be helpful if we can make sure that decision makers are there and able to give some direction. Maybe it is worthwhile canvassing Gadi, Mike and Ken about whether they will be able to attend/who should attend in order to be able to give direction on our response/next steps.

Thanks

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** October 24, 2017 1:00 PM
**To:** Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Strathy, Anna (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Further to OPG's response to our proposals, please find attached a discussion document drafted by our outside legal counsel Stephen Ashbourne and based on discussions amongst our Provincial legal teams.

This document sets out a number of questions that we need to consider and answer in order to respond to OPG with the Province's position.

A meeting amongst this group would be useful to discuss these issues and to inform a response to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.
We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.
Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,
Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.
As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.
Best Regards,
Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle,

John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

TORYS LLP

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding

Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Confidential legal advice subject to solicitor-client privilege**

October 23, 2017

**Questions for MOE and OFA to consider regarding OPG's Proposed Adherence Terms**

A. Scope of Province's Obligations under the Change of Law Protection Agreement (**CLPA**)

1. On a Protection Event, should the Province become responsible for the payment of taxes (if any) owing by the Financing Entity?

2. On a Protection Event, should the Province become liable to pay amounts owing by the Financing Entity to OPG (e.g., FSM fees and expenses)?

3. On a Protection Event, should all available funds (e.g., funds accumulated in sinking funds) be immediately applied to reduce the amount that the Province would be liable for under the CLPA?

4. Should the Province set a "Protection Agreement Maximum" (previously called the "Program Maximum") that measures and relates only to "principal amounts"? In other words, should the limitation be tied only to principal obligations, while the Province's actual obligations would automatically extend, without specific quantum limits, to the other payment obligations under "funding obligations" (e.g., interest, swaps, standby liquidity commitment fees, servicer fees and expenses)?

5. Is the Province comfortable guaranteeing contingent obligations (e.g., indemnity obligations) of the Financing Entity? If so, should the Province require that such contingent obligations be "capped" within the funding obligation itself or should the exposure of the Province be otherwise limited under the CLPA?

6. Should the Province be required to deposit funds to meet sinking fund or collateral deposits (i.e., deposit obligations incorporated in the financing structure on the basis that the "clean energy" cash flows will service the obligations, rather than the Province), notwithstanding that the Province would have become primarily liable for payment obligations under the CLPA?

B. Adhesion

7. Is the Province okay splitting the maximum exposure limitations and "process-related" matters (see below) into a separate agreement - away from the terms of the agreement under which the Province's payment obligations would bind the Province opposite the Indenture Trustee? OPG proposes this in order to keep the optics of the CLPA as simple and straightforward as possible. In other words, is the Province prepared to leave all of the important details regarding what OPG is supposed to do before incurring an obligation that binds the Province to a side agreement with OPG, that is opaque to the Indenture Trustee and Underwriters at the time a funding obligation is incurred and not requiring any third party to have notice or regard to the Province's requirements?

8. OPG proposes that delivery of an officers' certificate to a third party, in OPG's capacity as FSM, will in and of itself bind the Province under the CLPA. That certificate would simply indicate that the Province is bound under the CLPA with respect to the specified funding obligation. It would not be addressed to the Province (although a pre-closing certificate is contemplated to be delivered to the Province) and the "Protection Agreement Maximum" concept would not be incorporated as a specific condition (other

than to the extent that OPG is bound to the Province under the side agreement with the Province). Is this acceptable to the Province? Does this raise any governance/authority issues for the Province (e.g., limit on incurrence needing to be specifically confirmed at closing? scope of permitted delegation to bind? FAA compliance?)

C. "Protection Agreement Maximum" (formerly "Program Maximum" (**PAM**)

9. OPG proposes that the PAM will be determined based on a mechanical calculation and without any real discretion on the part of the Province to set or object to the PAM. Is this acceptable to the Province?

10. OPG's proposed mechanical process to determine PAM would be based on OPG's 24 month forecast (estimate) of payments to be made by the Financing Entity. So long as that forecast (and any refresh) is consistent with the "Financing Plan" (also prepared by OPG) and is "reasonably expected to align with the fair allocation amount", the Province will be required to accept the PAM based on OPG's forecast – i.e., no discretion to reject or modify the aggregate amount of the Province's commitment initially or from time to time. Is the Province prepared to tie its CLPA obligation automatically to the operation of the OFHPA in this way, without review and with perpetual effect?

11. Is the proposed mechanical link to the OFHPA calculations consistent with the OIC or other governance requirements applicable to the Province's authority to approve the CLPA?

12. Is the initial 24 month forecast period appropriate (e.g., 2.5B x 2 – large)? Is OPG's proposed refresh of the PAM (mechanically tied to the new forecast), 9 to 12 months prior to the end of the 24 month forecast period, appropriate?

D. "Process-Related" Matters

13. Assuming the Province is okay with the arrangements described in question 7, above, we would envision a mechanism where the Province could give the Indenture Trustee notice of a breach (if known) by OPG of the PAM or process-related side agreement, and that such a notice would have the effect of cutting off the application of the CLPA for any future incurrences unless the Province further agrees otherwise. Does the Province agree that this sort of failsafe is essential? Note that OPG's suggestion has been that no pre-incurrence non-adherence/failsafe provision be provided, in order to allow the Province to provide notice that the CLPA will not apply to a pending/proposed incurrence.

14. Does the Province need to contemplate other scenarios where the CLPA would become ineffective in respect of future incurrences, such as:

    a. an OPG change of control

    b. a policy-based determination by a future government

    c. an unanticipated circumstance, such as the incurrence by the Financing Entity of assessed tax liabilities, indemnity payments, "increased costs", rating downgrades, offering disclosure-based claims, defaults under the program,

insolvency of a major counterparty (e.g., swap counterparty or services provider), etc.

d. a discretionary circumstance where the Province decides it no longer wishes to be liable under the CLPA?

We expect that OPG would push back so that any suspension of new obligations by the Province would not hamper OPG's ability to complete an anticipated/needed refinancing.

15. Does the Province have any reservations about letting OPG at any time provide a binding certificate to third parties regarding adherence, which would be determinative of the Province's obligations. What conditions for this sort of certificate would make sense (e.g., preview and consent by the Province)? Does this proposal raise any governance/authority issues for the Province (e.g., scope of delegation; FAA compliance)?

16. If the Province is prepared to be liable for taxes owing by the Financing Entity (see question 1, above), what oversight, assurances, documentation and reporting regarding the potential for entity-level taxes should the Province require (if any)?

17. OPG is proposing that the Province will receive a certificate prior to the Financing Entity incurring a funding obligation, that sets out "the material terms of the funding obligations pertaining to the principal amount, pricing and third party fees". Is that a sufficient amount of detail, or would the Province like to specifically itemize its information expectations, to cover things such as:

    a. details respecting any principal obligation, such as:

        i. the amount, timing and conditions of repayments (including any redemption or extension rights)

        ii. the basis for OPG's expectations regarding the availability of any related refinancings

        iii. any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the principal obligation

        iv. the rating (if any) contemplated to be attributed to the principal repayment of the funding obligation

        v. details respecting any redemption rights, including the nature and conditions applicable to any exercise and OPG's expected basis for determining whether or not to exercise a redemption right, option or privilege;

    b. details respecting interest obligations, such as:

        i. the anticipated interest or discount rate or rates (including default rates)

        ii. the timing/frequency/conditions of coupon payments

iii. any required deposits to be made into a finance reserve account or supplemental account

iv. the availability of any funding rebates in order to provide for payment of interest

v. the rating (if any) contemplated to be attributed to the interest obligation;

c. details respecting any hedging obligation (e.g., interest or FX swaps, options or other derivatives), such as:

i. the name of the counterparty and credit details

ii. the credit ratings (if any) of the payor(s)

iii. the risks sought to be mitigated by the derivative

iv. anticipated circumstances (if any) in which the derivative may not achieve such mitigation or be subject to early termination

v. whether collateral posting requirements will apply;

d. details respecting other funding obligations, such as:

i. the payee

ii. the timing and any conditions of payments

iii. any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations

iv. in the case of a contingent obligation (e.g., indemnities), the nature and extent of any contingency affecting the payment obligation, the circumstances in which a payment obligation may arise and any specified maximum claim amount

e. assuming that the Province would be liable for capital, reserve or supplementary account deposit obligations (see question 6, above), details respecting the schedule for such deposits and the conditions for the application of such amounts to pay such amounts and the related priorities for application.

18. OPG (and presumably OPG's accountants) is contemplating that the Province will be provided transaction documentation "in substantially final form" and that the Province will not be entitled to provide input "other than in its capacity as obligor under the [CLPA]". In other words, assuming that the CLPA is signed in advance, the Province will have no real opportunity to comment on the forms of transaction documents to be used, and will

have a limited opportunity to "not accept" [1] the documentation. Can the Province live with these limitations?

19. The proposed OPG certificate (pre-incurrence) would include an attestation by OPG regarding the use of pre-reviewed documentation. The test for conformity of the to-be-used documentation, compared to the pre-reviewed documentation, would focus only on whether "the covenants of the Financing Entity are no more onerous in any material respect" and that the "events of default" are consistent "in all material respects". Is the limited scope of this conformity test acceptable, or should it be broadened and cover specific items such as:

    a. no differences in the timing of or circumstances under which payments are or may become due (for example, as a result of any termination, wind-up, liquidation or realization)

    b. no differences that could affect the Province's rights of subrogation or interests as a subrogee

    c. with respect to the anticipated form of series specific documents (as opposed to the upfront terms of program-wide "master" documents), confirming that the variable terms set forth in the proposed documents are as reasonably contemplated in the reviewed forms, having regard to such matters as:

        i. the type of instrument to be issued (i.e., debt (bullet vs. amortizing), equity-linked, pass-through instruments, etc.)

        ii. the scope of the related obligations (e.g., redemption or extension features or other optionality)

        iii. the extent of the related obligations (e.g., limited recourse features, limitations on indemnities, etc.)

        iv. the timing, conditions and circumstances in which payment obligations may arise,

    but making it clear that conformity would not include a comparison to the particular financial terms, rates, levels and parameters of the obligations other than if the reviewed forms specify specific requirements, limitations or parameters.

20. How much time is sufficient for the Province:

    a. to do an initial review of the main transaction documentation (including forms of series-specific documents), which would set the acceptable pattern for future

---

[1] Note that the proposed OPG language is not crystal clear that the Province can reject the reviewed documentation, which we expect is merely drafting, but that will need to be confirmed assuming the Province wishes to work within the OPG/Tory mark-up.

issuances? The proposal is 15 BDs, although that does not seem to make sense given that OPG proposes that the Province must confirm acceptance of the terms within 15 BDs of receipt of the documentation

b. to do a review of any changes to the main transaction documentation (including forms of series-specific documents), which would reset the acceptable pattern for future issuances? The proposal is to receive proposed amendments at least 15 BDs prior to first use, and the Province would confirm acceptance of the terms within 15 BDs of receipt of the documentation

c. to review applicable details of a proposed funding obligation in advance of an incurrence (proposal is 10BDs)?

21. What other items should be incorporated into the timeline from the Province's perspective?

E. Information, Reporting and Other Covenants

22. OPG proposes to provide the Province with an applicable "Financing Plan" only after an incurrence. Does the Province need to see this document as it is issued and changed, rather than only after the time of an incurrence?

23. OPG proposes to provide the Province with any actual offering/disclosure documents only after it is used. Does the Province need to have input into offering/disclosure document before use or dissemination (e.g., the description of the CLPA)?

24. OPG has limited its negative covenant on elections by the Financing Entity following a Protection Event to actions that would accelerate obligations. Should this be broader to cover extensions or other consensual changes that could affect the obligations (e.g., creditor concessions).

F. Parties

25. Will it be sufficient for the CLPA (and any procedural side-letter) to be signed by OPG, acting solely in its capacity as "financial services manager" (i.e., with OPG's liability being limited by the terms of the related management or administrative agreement)? How does this interplay with any other indemnities or exculpatory provisions that the Province is anticipating for OPG (corporate) and its officers?

26. Who from OPG should sign the officer's certificate? The OPG proposal is 2 "executive officers".

27. OPG proposes that a failure to comply with the PAM or "approval process" will not result in any breach. Assuming that OPG is in fact proposing that its failure would have no consequences, including as between the Province and OPG whatsoever, are the process aspects of the OPG proposal even meaningful to the Province?

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Ronald Kwan; Mike Manning; Ken Kandeepan |
| **Cc:** | Anna Strathy |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 11:18:32 AM |

Thanks, Ron. Mike was of the same view. Even more reason for them not to do US$ deals if they can avoid them. I'm wondering if we should ask them, when they're negotiating their ISDA agreements, to put a clause in that would allow those swaps, if they were to be transferred to the Province under the Change of Law Assumption Agreement, to then be governed under the Province's ISDA agreement with that entity, if one is already in place, rather than us being stuck with one negotiated by OPG?

**From:** Ronald Kwan
**Sent:** Thursday, October 19, 2017 10:30 AM
**To:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Gadi,

Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):

> In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.

Ron

**From:** Gadi Mayman
**Sent:** October-19-17 09:28
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement

I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY

<ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>

**Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS)

<Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached

comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

**Sent:** October-13-17 4:47 PM

**To:** Mansoori, Nina <nmansoori@torys.com>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not

work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval

on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>;

Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law

Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés

à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Ronald Kwan
**To:** Gadi Mayman; Mike Manning; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Thursday, October 19, 2017 10:30:06 AM

---

Hi Gadi,

Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):

> In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.

Ron

---

**From:** Gadi Mayman
**Sent:** October-19-17 09:28
**To:** Mike Manning ; Ronald Kwan ; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement

I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>,

"'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>
**Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,
Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.
As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.
Best Regards,
Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

? The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of

the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez

en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 9:28:16 AM |

Thanks Nina. That would seem to be one of the important documents.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 19, 2017 9:26 AM
**To:** Hanslep, Malle (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

My pleasure, Malle. Yes, there will be a supplemental indenture for the long term financing. Oslers is working on that but we have not yet received a draft. Once it is in an advanced form, we will also provide that to this group.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-19-17 9:22 AM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

Thanks for this. Will there also be a draft supplemental for a bond/note issuance?
Best,
Malle

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 19, 2017 9:17 AM
**To:** Hanslep, Malle (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'; Whitfield, Tobias P. (MOF); Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS)

<Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG);

'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to

bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the

Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à

l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 9:26:00 AM |

My pleasure, Malle. Yes, there will be a supplemental indenture for the long term financing. Oslers is working on that but we have not yet received a draft. Once it is in an advanced form, we will also provide that to this group.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-19-17 9:22 AM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; 'WONG Leslie -LAWDIV' ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LADAK Lubna -TREASURY' ; Whitfield, Tobias P. (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

Thanks for this. Will there also be a draft supplemental for a bond/note issuance?

Best,

Malle

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 19, 2017 9:17 AM
**To:** Hanslep, Malle (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF); Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good Morning Malle,

In terms of Program Agreements, here is an update:

-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.

-we received an initial draft supplemental for the warehouse facility on Tuesday from the

dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General

Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis

(OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:
-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out

what you are proposing not be covered.

- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should

expect your feedback.
Many thanks,
Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that

may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer

immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 9:22:18 AM |

Hi Nina,
Thanks for this. Will there also be a draft supplemental for a bond/note issuance?
Best,
Malle

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 19, 2017 9:17 AM
**To:** Hanslep, Malle (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF); Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson,

Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on

whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt

issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald

(OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a

proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing

Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Tobias P. Whitfield (MOF); Mansoori, Nina |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 19, 2017 9:18:23 AM |
| **Attachments:** | Fair Hydro - Management Agreement (DRAFT).pdf<br>Fair Hydro - Declaration of Trust (DRAFT).pdf |

Good Morning Malle,

In terms of Program Agreements, here is an update:

-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.

-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.

-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).

-we'll have a form of ISDA Schedule to you soon.

-we don't expect to have a substantially advanced draft of the OM to share until November.

Please let me know if you have any questions.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina ; Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; 'WONG Leslie -LAWDIV' ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context

for review by the Province. If they are not yet available, when are they expected to be available? Thank you.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>;

Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection

Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection

Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**DRAFT: OCTOBER 12, 2017**

# MANAGEMENT AGREEMENT

between

■
as Issuer

- and -

**ONTARIO POWER GENERATION INC.**
as Manager

Acknowledged and Accepted by

■
as Indenture Trustee

**Dated as of ■, 2017**

## TABLE OF CONTENTS

**ARTICLE 1**
**INTERPRETATION ..... 2**
1.1 Definitions ..... 2

**ARTICLE 2**
**INTRODUCTORY PROVISIONS ..... 4**
2.1 Sections and Headings ..... 4
2.2 Extended Meanings ..... 4
2.3 References to Acts of the Issuer or the Issuer Trustee ..... 5

**ARTICLE 3**
**APPOINTMENT OF THE MANAGER ..... 5**
3.1 Appointment and Authority of the Manager ..... 5

**ARTICLE 4**
**DUTIES AND OBLIGATIONS OF THE MANAGER ..... 6**
4.1 Program Agreements ..... 6
4.2 Issuer Investment Interest ..... 9
4.3 Investment Interest Records ..... 10
4.4 Payment of Other Issuer Fees and Expenses ..... 11
4.5 Delegation ..... 12
4.6 Annual Compliance Certificates ..... 12
4.7 Acknowledgment of Duties as Financial Services Manager ..... 12

**ARTICLE 5**
**OTHER PROVISIONS RELATING**
**TO THE DUTIES AND COMPENSATION ..... 13**
5.1 Standard of Care ..... 13
5.2 Compliance with Program Agreements; Conformity with Law ..... 13
5.3 Liabilities ..... 13
5.4 Compensation of the Manager ..... 14
5.5 Compensation of the Issuer ..... 14
5.6 Indemnification by Manager ..... 15
5.7 Contracting with Itself and Affiliates ..... 16

**ARTICLE 6**
**REPRESENTATIONS AND WARRANTIES ..... 16**
6.1 Representations of the Issuer ..... 16

6.2 Representations of the Manager ..... 16

**ARTICLE 7**
**TERMINATION AND RESIGNATION ..... 16**
7.1 Termination ..... 16

**ARTICLE 8**
**MISCELLANEOUS ..... 17**
8.1 Appointment of Manager as Attorney-in-Fact ..... 17
8.2 Amendments and Waivers ..... 17
8.3 Withholding Rights ..... 17
8.4 No Petition ..... 18
8.5 Notice ..... 18
8.6 Recourse to Issuer Trustee and the Issuer ..... 19
8.7 Severability ..... 19
8.8 Execution of Counterparts; Electronic Delivery ..... 19
8.9 Governing Law ..... 19
8.10 Grant of Security Interest to Indenture Trustee ..... 19

**EXHIBIT**

Exhibit A – Annual Compliance Certificate

# MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

■, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

**ONTARIO POWER GENERATION INC.**, a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

**[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

**WHEREAS** the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

**AND WHEREAS** Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

**AND WHEREAS** the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

**AND WHEREAS** the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, those rights and obligations set forth in Sections 4.1(a)(vii), 4.1(a)(xx), 4.1(a)(xxiii), 4.3(a), 4.7(d), 4.7(e), 5.6, 7.1, 8.2(b) and 8.10 hereof;

**AND WHEREAS** the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

**NOW THEREFORE** in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this Agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital continued under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

"**Management Fees**" means the fees payable to the Manager, as set out in the applicable fee letter to be issued on an annual basis or more frequently as the Issuer and the Manager may determine;

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO and acknowledged and accepted by the Indenture Trustee, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"**Program Agreements**" means the Indenture, each Supplemental Indenture, the Declaration of Trust, this Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the Change of Law Protection Agreement, the Notes, any Derivative

Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements and Note Purchase Agreements in effect at such time and all other documents and certificates delivered in connection therewith;

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means the regulations promulgated under the Act;

"**Servicer CEA Collections**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

## ARTICLE 2
## INTRODUCTORY PROVISIONS

### 2.1 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

### 2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

### 2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

## ARTICLE 3
## APPOINTMENT OF THE MANAGER

### 3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for

the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement.

## ARTICLE 4
## DUTIES AND OBLIGATIONS OF THE MANAGER

### 4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the

account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and

preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, Liquidity Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

**4.2 Issuer Investment Interest**

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between the Servicer CEA Collections and the Clean Energy Adjustment;

(e) instituting any action or proceeding necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any action or proceeding necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

**4.3 Investment Interest Records**

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee, as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section 4.3 shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section 4.3.

(c) Nothing in this Section 4.3 shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section 4.3, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

**4.4 Payment of Other Issuer Fees and Expenses**

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

### 4.5 Delegation

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

### 4.6 Annual Compliance Certificates

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

### 4.7 Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

## ARTICLE 5
## OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

### 5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

### 5.2 Compliance with Program Agreements; Conformity with Law

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

### 5.3 Liabilities

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the standard of care required under Section 5.1.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

### 5.4 Compensation of the Manager

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements, the Management Fees. The Management Fees are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

### 5.5 Compensation of the Issuer

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

**5.6 Indemnification by Manager**

The Manager agrees to indemnify, defend and hold harmless the Issuer from and against any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the standard of care required under Section 5.1, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Issuer. It is, however, expressly understood that the Manager is not agreeing to indemnify or hold the Issuer harmless with respect to any of the following:

(a) payments due on Issuer Funding Obligations or other amounts borrowed;

(b) any breach or failure to perform on the part of any other third party under any Program Agreement;

(c) any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

(d) any amount for which the Issuer agrees to indemnify the Manager hereunder;

(e) any liability of the Issuer accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(f) any losses of the Issuer arising due to risks inherent in the Issuer Investment Interest; or

(g) any statements or certificates provided by the Issuer to the effect that

(i) any Funding Obligation is consistent with the Financing Plan, or

(ii) the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period.

It is further understood that the Manager is not agreeing to indemnify or hold harmless the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

The Manager agrees to indemnify, defend and hold harmless the Indenture Trustee from and against any and all liabilities which may be imposed on, incurred by or asserted against the Indenture Trustee as the result of any wilful misconduct or gross negligence relating to the maintenance and custody by the Manager, as custodian, of the Investment Interest Records; provided that (a) the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own

expense, which decision will be binding upon the Indenture Trustee and (b) the Manager shall not be liable for any portion of any liability resulting from the wilful misconduct, bad faith or gross negligence of the Indenture Trustee.

### 5.7 Contracting with Itself and Affiliates

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

### 6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that (a) the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and (b) this Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

### 6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (a) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager, (b) this Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (c) it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

## ARTICLE 7
## TERMINATION AND RESIGNATION

### 7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and 8.3) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30$^{th}$ day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all

records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

## ARTICLE 8
## MISCELLANEOUS

### 8.1 Appointment of Manager as Attorney-in-Fact

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

### 8.2 Amendments and Waivers

(a) Subject to Section 8.2(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 8.3 Withholding Rights

The parties hereto shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such

payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

**8.4 No Petition**

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

**8.5 Notice**

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

■
■
■
■

Email: ■
Attention: ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

### 8.6 Recourse to Issuer Trustee and the Issuer

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

### 8.7 Severability

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

### 8.8 Execution of Counterparts; Electronic Delivery

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

### 8.9 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 8.10 Grant of Security Interest to Indenture Trustee

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

***[Remainder of page intentionally left blank.]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**■, by its sole trustee ■**
**as Issuer**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ACKNOWLEDGED AND ACCEPTED:**

■
**as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

## EXHIBIT A

## ANNUAL COMPLIANCE CERTIFICATE

**TO**: ■, (the "**Issuer Trustee**") in its capacity as issuer trustee of ■ (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

**ONTARIO POWER GENERATION INC.**
**as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**DRAFT: OCTOBER 12, 2017**

**[TRUST COMPANY]**

as Issuer Trustee of

■

---

# DECLARATION OF TRUST

Made as of ■, 2017

---

**TABLE OF CONTENTS**

**Page**


**ARTICLE 1 INTERPRETATION ..... 1**

1.1 Definitions ..... 1
1.2 Interpretation ..... 5
1.3 Accounting Principles ..... 6
1.4 References to Acts of the Trust ..... 6

**ARTICLE 2 THE TRUST ..... 6**

2.1 Purpose and Activities of the Trust ..... 6
2.2 Limitation on Certain Activities ..... 7
2.3 Name and Head Office ..... 8
2.4 Nature of the Trust ..... 8
2.5 Rights of Unitholders ..... 8

**ARTICLE 3 UNITS ..... 9**

3.1 Nature of Units ..... 9
3.2 Consideration of Units ..... 9
3.3 No Pre-Emptive Rights ..... 9
3.4 Fractional Units ..... 9
3.5 Allotment and Issue ..... 10
3.6 Prohibited Issuances and Transfers ..... 10
3.7 Liability of Unitholders ..... 11

**ARTICLE 4 REDEMPTION OF UNITS ..... 12**

4.1 Redemption of Units ..... 12

**ARTICLE 5 RIGHTS AND POWERS OF ISSUER TRUSTEE ..... 13**

5.1 General Rights and Powers ..... 13
5.2 Acquisition of Assets and Deposit of Funds ..... 13
5.3 Legal Title and Custody ..... 14
5.4 Disposition of Trust Property ..... 14
5.5 Management of Trust Property ..... 14
5.6 Power to Borrow Money and Issue Funding Obligations ..... 14
5.7 Hedging Agreements ..... 15
5.8 Execution of Instruments ..... 15
5.9 Facsimile Signatures ..... 15
5.10 Taxes ..... 15
5.11 Collection ..... 16
5.12 Expenses and Compensation of Issuer Trustee ..... 16
5.13 Allocation ..... 17
5.14 Fiscal Year and Form of Accounts ..... 17
5.15 Power to Contract ..... 17
5.16 Indemnification ..... 18

**TABLE OF CONTENTS**
(continued)

**Page**


5.17 Further Powers ..... 18
5.18 Auditors ..... 19
5.19 Defect in Appointment ..... 19
5.20 Status ..... 19

**ARTICLE 6 REPLACEMENT OF ISSUER TRUSTEE ..... 19**

6.1 Resignation of Issuer Trustee ..... 19
6.2 Removal of Issuer Trustee ..... 20
6.3 Vacancy ..... 20
6.4 Appointment of New Issuer Trustee ..... 20
6.5 Merger, Consolidation and Amalgamation ..... 20
6.6 Vesting in Successor Issuer Trustee ..... 21
6.7 Confidentiality ..... 21
6.8 Right to Disclose ..... 21

**ARTICLE 7 STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS ..... 21**

7.1 Standard of Care ..... 21
7.2 Limitation of Liability of Issuer Trustee ..... 22
7.3 Indemnification of the Issuer Trustee ..... 22
7.4 Reliance upon Advice ..... 23
7.5 Retain Experts ..... 23
7.6 Reliance on Experts ..... 23
7.7 Provisions Regarding Liability ..... 23

**ARTICLE 8 RECORDS ..... 24**

8.1 Records to be Kept ..... 24
8.2 Segregation of Assets ..... 24
8.3 Method of Keeping Records ..... 24
8.4 Annual Financial Statements ..... 24

**ARTICLE 9 MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS ..... 24**

9.1 Annual Meeting ..... 24
9.2 Other Meetings ..... 24
9.3 Quorum and Voting ..... 25
9.4 Written Resolution ..... 25

**ARTICLE 10 AMENDMENT ..... 25**

10.1 Amendment ..... 25
10.2 Automatic Amendment ..... 26
10.3 Supplemental Declaration of Trust ..... 26

**TABLE OF CONTENTS**
(continued)

**Page**

**ARTICLE 11 DISTRIBUTION OF TRUST PROPERTY ..... 26**

11.1 Distributions ..... 26
11.2 Allocation ..... 28
11.3 Payment of Distributions ..... 28
11.4 Legal Rights ..... 29
11.5 Income Tax Matters ..... 29
11.6 Designations ..... 29
11.7 Withholding Taxes ..... 30

**ARTICLE 12 TERMINATION OF THE TRUST ..... 30**

12.1 Termination ..... 30

**ARTICLE 13 GENERAL ..... 31**

13.1 Irrevocability ..... 31
13.2 Change of Office ..... 31
13.3 Execution of Instruments ..... 31
13.4 Manner of Giving Notice ..... 31
13.5 Taxation Information ..... 31
13.6 Severability ..... 31
13.7 Governing Law ..... 32
13.8 Language ..... 32

**THIS DECLARATION OF TRUST** is made as of ■, 2017 by ■, a trust company established under the laws of **[Canada]** (the "**Issuer Trustee**").

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

**AND WHEREAS** the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

**NOW THEREFORE** the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Adjusted Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Excess Income on Redemption**" has the meaning ascribed thereto in subsection 11.1(2).

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means ■ and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO, and acknowledged and accepted by the Indenture Trustee.

"**Net Realized Capital Gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**Net Realized Capital Gains of the Trust Allocated on Redemption**" has the meaning ascribed thereto in subsection 4.1(5).

"**New Holder**" has the meaning ascribed thereto in subsection 3.6(1).

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, the Change of Law Protection Agreement and any

hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means ■, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.[1]

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

**1.2 Interpretation**

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

---

[1] Note: It is proposed that a single unit of the Trust will be issued to the Indenture Trustee (in addition to units to OPG or a subsidiary of OPG) in order to ensure that OPG or a subsidiary of OPG does not have the capability to cause the Trust to be wound-up.

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

### 1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

### 1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

## ARTICLE 2
## THE TRUST

### 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d) above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

**2.2 Limitation on Certain Activities**

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit

of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

### 2.3 Name and Head Office

The English form of the name of the Trust is "■" and the French form of the name of the Trust is "■". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at **[*address of Issuer Trustee*]**.

### 2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

### 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall

confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

## ARTICLE 3
## UNITS

### 3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

### 3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

### 3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

### 3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units,

entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

### 3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

### 3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

### 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

## ARTICLE 4
## REDEMPTION OF UNITS

### 4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the "**Redemption Price**") established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will, subject to compliance with any regulatory requirements, distribute to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. The amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the "**Adjusted Redemption Price**").

(4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such in specie distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the "**Net Realized Capital Gains of the Trust Allocated on Redemption**"). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized

Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

## ARTICLE 5
## RIGHTS AND POWERS OF ISSUER TRUSTEE

### 5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

### 5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

### 5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

### 5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

### 5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

### 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering

memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

### 5.7 Hedging Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

### 5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

### 5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

### 5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

### 5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

### 5.12 Expenses and Compensation of Issuer Trustee

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby

created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

### 5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

### 5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

### 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust

Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

**5.16 Indemnification**

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

**5.17 Further Powers**

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable

in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

### 5.18 Auditors

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

### 5.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

### 5.20 Status

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

## ARTICLE 6
## REPLACEMENT OF ISSUER TRUSTEE

### 6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating

Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

**6.2 Removal of Issuer Trustee**

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

**6.3 Vacancy**

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

**6.4 Appointment of New Issuer Trustee**

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

**6.5 Merger, Consolidation and Amalgamation**

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of

Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

### 6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

### 6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

### 6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

## ARTICLE 7
## STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

### 7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty,

the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

### 7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

### 7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the

extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

### 7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

### 7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

### 7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

### 7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the

Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

## ARTICLE 8
## RECORDS

### 8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

### 8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

### 8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

### 8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

## ARTICLE 9
## MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

### 9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

### 9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer

Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

### 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

### 9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

## ARTICLE 10
## AMENDMENT

### 10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

### 10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

### 10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

## ARTICLE 11
## DISTRIBUTION OF TRUST PROPERTY

### 11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the "**Excess Income on Redemption**"), the Issuer Trustee shall declare to be payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional

Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.

(3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(4) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the "SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(5) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on

such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

**11.2 Allocation**

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);

(b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(3) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

**11.3 Payment of Distributions**

(1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other

document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

**11.4 Legal Rights**

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

**11.5 Income Tax Matters**

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

**11.6 Designations**

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received

or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

### 11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions payable to a Unitholder amounts required by law to be deducted or withheld from such Unitholder's distributions, whether such distributions are in the form of cash, a promissory note, additional Units or otherwise. To the extent that any amounts are deducted or withheld from payments described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to a Unitholder in respect of the distribution payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution described in subsections 4.1(5) or 11.1(2), or elects to pay a distribution in the manner contemplated in subsection 11.3(3), the Unitholder shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

## ARTICLE 12
## TERMINATION OF THE TRUST

### 12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust, including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

## ARTICLE 13
## GENERAL

### 13.1 Irrevocability

The Trust shall be irrevocable.

### 13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

### 13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

### 13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

### 13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

### 13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable

such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

### 13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

### 13.8 Language

*Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.* The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**IN WITNESS WHEREOF** the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

**[TRUST COMPANY]**,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mansoori, Nina; Tobias P. Whitfield (MOF) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY" |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 18, 2017 7:02:02 PM |

Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the

requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael;

Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection

Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis

(OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free

to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing

Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited.

If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Tobias P. Whitfield (MOF) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Mansoori, Nina |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 18, 2017 9:54:40 AM |
| **Attachments:** | OFHPA - Province Support - Obligor Approval Process(OPG_Torys_CommentsOc....docx<br>Blackline_24337136v1 - 24337136v3.pdf |

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; 'WONG Leslie -LAWDIV' ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Hanslep, Malle (MOF) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's

accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM

**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a)

covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à

l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Subject to satisfaction of the conditions described under "Adherence Condition" and "Approval Process" below, the Change of Law Protection Agreement will apply (without duplication) to all finance amounts of the applicable financing entity excluding the following (collectively, the "Specified Claims"): (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) **[amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account]**[1], and (c) **[tax liabilities]**[2] and (d) **INTENTIONALLY DELETED**.[3]

Adherence Condition

The Change of Law Protection Agreement will bind the Province in respect of a Specified Claim if OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.[4]

Approval Process

OPG, as financial services manager, agrees that it will not provide the certification under the heading "Adherence Condition" unless the following has been satisfied:

1. at the time the applicable funding obligations are incurred, the maximum aggregate payment amounts due or becoming due under such funding obligations, together with all other outstanding or committed Specified Claims, do not exceed the Program Maximum in effect at that time; and

[1] Why wouldn't this be covered? If the Province is agreeing to make regularly scheduled payments if a Protection Event occurs, deposits into such accounts may be part of the overall payment schedule.

[2] How would the financing entity otherwise pay such tax liabilities? How else to address the point that such amounts would by statute take priority over scheduled payments?

[3] In Toby's October 13 email, we understand this was included so that the quantum of contingent obligations would be factored into the Program Maximum test. However, any contingent liabilities would already be factored into the determination of the Program Maximum so should not be excluded here. For example, if the financing entity has a LC facility, the potential liability under those undrawn LCs would already be included in the Program Maximum.

[4] We would like to avoid involving the investors in the approval process mechanics between the Province and OPG and would rather deal with this process in a separate side letter or memo. The financeability of the transaction turns on investors' ability to simply confirm that the Specified Claims are covered under the Change of Law Protection Agreement without the additional hair of the behind-the-scenes approval process between the Province and OPG.

2. OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than **[ten (10)]** Toronto business days prior to the incurrence of such funding obligations:

   (a) setting out the material terms of the funding obligations pertaining to principal amount, pricing and third party fees; and

   (b) confirming that:

      (i) the funding obligations (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and

      (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation.

In connection with an incurrence or amendment of funding obligations and other related Specified Claims, OPG may certify to interested third parties (including, without limitation, the Indenture Trustee) that such Specified Claims are covered by the Change of Law Protection Agreement provided that the Approval Process has been satisfied in accordance with this document. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by all addressees as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than **[fifteen (15)]** Toronto business days prior to the initial issuance of any funding obligations by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a funding obligation may arise or be affected;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the funding obligations together with any related material information.

If acceptable, the Province will confirm within **[fifteen (15)]** Toronto business days of receipt of such documents that such reviewed documents shall be the "Reviewed Documentation" for the purposes of the Approval Process; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement**.**

Any proposed material changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than **[fifteen (15)]** Toronto business days prior to any proposed use or such documents becoming effective. Such material additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying the Approval Process if the Province confirms the same within **[fifteen (15)]** Toronto business days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.

The term "Substantially in the Form" herein means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), that the covenants of the financing entity are no more onerous in any material respect and there are events of

default that are consistent in all material respects, respectively, with the covenants of the financing entity and events of default contained in the Reviewed Documentation; and

(b) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document complies in all material respects with all securities disclosure requirements relating to the funding obligations subject to distribution thereunder.

Program Maximum

The initial Program Maximum will be determined prior to the initial issuance of the first funding obligation in accordance with this section. The Program Maximum will be based on OPG's forecast of the maximum payment obligations expected to arise under Specified Claims during the next 24 month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than **[thirty (30)]** Toronto business days prior to the proposed incurrence of the first funding obligations. If the Province agrees that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods, then the Province will confirm in writing to OPG and the financing entity within **[thirty (30)]** Toronto business days of receipt of the Forecast that it agrees with the Program Maximum.

The Forecast will be updated and delivered to the Province between nine (9) and twelve (12) months prior to the expiry of the then current Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will confirm that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods. If the Province does not agree with the determination of the Program Maximum, then the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and the Program Maximum will be revised within **[thirty (30)]** Toronto business days of receipt of the Forecast. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Promptly after the issuance of funding obligations by a financing entity (or an amendment thereof), OPG will provide the Province with:

(a) a copy of the then most recent Financing Plan; and

(b) electronic copies of all related closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations (including, for greater certainty, any disclosure documents).

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Condition and the Approval Process.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as financial services manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Specified Claim or exercise any other election or privilege in respect of any Specified Claim, in each case, if as a result the obligations applicable to the Specified Claim under the Change of Law Protection Agreement would be accelerated; and

(c) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province unless that disclosure is substantially in a form previously approved by the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Condition and Approval Process.

## Adherence of the Change of Law Protection Agreement to Approved Obligations

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

~~Approval Process~~

Subject to satisfaction of the conditions described under "Adherence Condition"~~,~~ **and "Approval Process"** below, the Change of Law Protection Agreement will apply (without duplication) ~~in respect of the following "Specified Claims" (as defined in the Term Sheet)~~**to all finance amounts** of the applicable financing entity **excluding the following** (collectively, the "~~Approved Obligations~~**Specified Claims**"):

1. ~~repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");~~

2. ~~obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");~~

3. ~~interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");~~

4. ~~derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");~~

5. ~~other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and~~

[1] ~~This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.~~

[2] ~~Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.~~

6. ~~finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),~~

~~but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including~~ (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) **[amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account][1]**, **and** (c) **[tax liabilities** ~~and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.~~**][2] and (d) INTENTIONALLY DELETED.[3]**

Adherence ~~Conditions~~**Condition**

The Change of Law Protection Agreement will bind the Province in respect of a ~~funding obligation that is an Approved Obligation if:~~**Specified Claim if OPG, as financial services manager, delivers a certificate, signed by at least two executive officers of OPG and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.[4]**

**Approval Process**

**OPG, as financial services manager, agrees that it will not provide the certification under the heading "Adherence Condition" unless the following has been satisfied:**

~~[3] Confirm arrangements with OPG.~~

**[1] Why wouldn't this be covered? If the Province is agreeing to make regularly scheduled payments if a Protection Event occurs, deposits into such accounts may be part of the overall payment schedule.**

**[2] How would the financing entity otherwise pay such tax liabilities? How else to address the point that such amounts would by statute take priority over scheduled payments?**

**[3] In Toby's October 13 email, we understand this was included so that the quantum of contingent obligations would be factored into the Program Maximum test. However, any contingent liabilities would already be factored into the determination of the Program Maximum so should not be excluded here. For example, if the financing entity has a LC facility, the potential liability under those undrawn LCs would already be included in the Program Maximum.**

**[4] We would like to avoid involving the investors in the approval process mechanics between the Province and OPG and would rather deal with this process in a separate side letter or memo. The financeability of the transaction turns on investors' ability to simply confirm that the Specified Claims are covered under the Change of Law Protection Agreement without the additional hair of the behind-the-scenes approval process between the Province and OPG.**

1. at the time the **applicable** funding ~~obligation is~~**obligations are** incurred, the maximum aggregate payment amounts due or becoming due under ~~the~~**such** funding ~~obligation~~**obligations**, together with all other outstanding or committed ~~Approved Obligations~~**Specified Claims**, do not exceed the Program Maximum~~;~~ **in effect at that time; and**

2. OPG**, as financial services manager,** delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than ~~•~~**[ten (10)]** Toronto business days prior to the incurrence ~~or any amendment of the funding obligation, setting out the following with respect to the funding obligation~~**of such funding obligations**:

   (a) ~~the following information respecting a funding obligation to be incurred:~~**setting out the material terms of the funding obligations pertaining to principal amount, pricing and third party fees; and**

   ~~(i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;~~

   ~~(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;~~

   ~~(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;~~

   ~~(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the~~

~~Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;~~

~~(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;~~

~~(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;~~

~~(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;~~

**(b)** ~~(c) a statement~~**confirming** that:

(i) the ~~Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation~~**funding obligations** (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; **and**

~~(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect,~~<~~*in all material respects,* >~~arm's length terms and conditions;~~

**(ii)** ~~(iii)~~ any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation~~; and~~

~~(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation~~.

~~If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.~~ In connection with an incurrence or amendment of ~~a~~ funding ~~obligation~~**obligations and other related Specified Claims**, OPG may certify to interested third parties ~~that Adherence Condition 2[4] with respect thereto~~**(including, without limitation, the Indenture Trustee) that such Specified Claims are covered by the Change of Law Protection Agreement provided that the Approval Process** has been satisfied **in accordance with this document**. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by ~~any addressee~~**all addressees** as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than ~~•~~**[fifteen (15)]** Toronto business days prior to the initial issuance of any funding ~~obligation~~**obligations** by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

~~[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?~~

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a ~~Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation~~**funding obligation** may arise or be affected~~. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;~~ **;**

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the ~~Funding Obligation~~**funding obligations** together with any related material information.

If acceptable, the Province will confirm **within [fifteen (15)] Toronto business days of receipt of such documents** that such reviewed documents shall be the "Reviewed Documentation" for the purposes of ~~Adherence Condition 2(c)~~**the Approval Process; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement.**

Any proposed **material** changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than ~~•~~**[fifteen (15)]** Toronto business days prior to any proposed use or such documents becoming effective. Such ~~modified,~~**material** additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying ~~Adherence Condition 2(c)~~ **the Approval Process** if the Province confirms **the** same ~~not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.~~**within [fifteen (15)] Toronto business days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.**

~~For the purposes of Adherence Condition 2(c), the~~**The** term "Substantially in the Form" **herein** means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), ~~above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue~~

~~(including as a result of any default, acceleration, termination, wind up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation~~**that the covenants of the financing entity are no more onerous in any material respect and there are events of default that are consistent** *in all material respects,* **respectively, with the covenants of the financing entity and events of default contained in the Reviewed Documentation; and**

~~(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and~~

**(b)** ~~(c)~~ with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document ~~and that such proposed disclosure document~~ complies in all material respects with all securities disclosure requirements relating to the ~~Funding Obligation~~**funding obligations** subject to distribution thereunder.

Program Maximum

The **initial** Program Maximum will be determined ~~by the Province~~ prior to the initial issuance of the first funding obligation. ~~In determining the~~ **in accordance with this section. The** Program Maximum~~, the Province~~ will ~~have regard to (but not be bound by)~~**be based on** OPG's forecast of the maximum payment obligations expected to arise under ~~Approved Obligations~~**Specified Claims** during the next ~~[12]~~**24** month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than ~~•~~**[thirty (30)]** Toronto business days prior to the proposed incurrence of the first funding ~~obligation. The Province will confirm the Program Maximum~~**obligations. If the Province agrees that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods, then the Province will confirm** in writing to OPG and the financing entity **within [thirty (30)] Toronto business days of receipt of the Forecast that it agrees with the Program Maximum**.

The Forecast will be updated and delivered to the Province ~~[quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following the date~~**between nine (9) and twelve (12) months prior to the expiry** of ~~such updated~~**the then current** Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will ~~determine whether or not~~**confirm that the Forecast is consistent with the Financing Plan and the finance amounts contemplated thereunder for the**

**applicable reference periods are reasonably expected to align with the fair allocation amounts in respect of such reference periods. If the Province does not agree with the determination of the Program Maximum, then the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and** the Program Maximum will be revised **within [thirty (30)] Toronto business days of receipt of the Forecast**. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

~~Prior to~~**Promptly after** the ~~initial~~ issuance of ~~any~~ funding ~~obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.~~

~~Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.~~

~~Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be~~**obligations by a financing entity (or an amendment thereof), OPG will** provide the Province with **:**

**(a) a copy of the then most recent Financing Plan; and**

**(b)** electronic copies of all related ~~governing and all other~~ closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations **(including, for greater certainty, any disclosure documents)**.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence ~~Conditions~~**Condition and the Approval Process**.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as ~~Financial Services Manager~~**financial services manager**) with the OFHPA, the General Regulation and any other enactment related thereto;

~~(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;~~

**(b)** ~~(c)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any ~~Approved Obligation~~**Specified Claim** or exercise any other election or privilege in respect of any ~~Approved Obligation~~**Specified Claim**, in each case**,** if as a result the obligations applicable to the ~~Approved Obligation~~**Specified Claim** under the Change of Law Protection Agreement would be accelerated~~, delayed or otherwise affected;(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent~~; and

**(c)** ~~(e)~~ OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province **unless that disclosure is substantially in a form previously approved by the Province**.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence ~~Conditions~~**Condition and Approval Process**.

Document comparison by Workshare Compare on October-18-17 9:41:10 AM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24337136/1 |
| Description | #24337136v1<TorysAtWork> - OFHPA - Province Support - Obligor Approval Process(OPG/Torys'CommentsOctober/16/17) |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24337136/3 |
| Description | #24337136v3<TorysAtWork> - OFHPA - Province Support - Obligor Approval Process(OPG/Torys'CommentsOctober/16/17) |
| Rendering set | strikeout-colour |

| Legend: | |
|---|---|
| **Insertion** | |
| ~~Deletion~~ | |
| <~~*Moved from* >~~ | |
| >*Moved to* < | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 84 |
| Deletions | 103 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |

| | |
|---|---|
| Total changes | 189 |

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mansoori, Nina |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY" |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 13, 2017 4:47:02 PM |
| **Attachments:** | Response to OPG comments on Change of Law Protection Agreement.docx |

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the

obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short

term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential.

Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

[NOTE TO DRAFT: CONFIRM THAT TORYS IS REFERRING TO THE OFA/MOE PROPOSAL FROM SEPTEMBER 27TH. ]

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

**Accounting Issues:**
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

[There is minimal oversight and input from the Province so long as the pre-agreed scope and parameters are adhered to.]

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

[The proposal is that basic information regarding an incurrence will be provided to enable the province to (1) understand the nature and scope of the incurrence, to enable the Province to address internal governance considerations and (2) to be satisfied that the proposed incurrences are in-line with the pre-agreed parameters (the "Parameters"). The intention is not to curtail incurrences that follow the pre-agreed approach. The timing of the notice to the Province may be a point of discussion.]

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
[As the entity running the program, OPG will be expected to provide the province with information sufficient to enable the province to make sure any incurrence falls inside the Parameters. The delivery of a certificate in an agreed form, just prior to the time of the incurrence, is meant to create a brightline test for the financing entity's counterparties to know that, so long as the certificate has been delivered (even if it's inaccurate), the Province will be bound. As you suggest below, any inaccuracy will give rise to considerations between the province and OPG. The delivery of the certificate at the time of an incurrence is considered an important due diligence confirmation for the province.
What is the basis for E&Y expressing a reservation regarding the province having access to underlying information about the "approved obligations", which in turn will define the scope of the

province's own obligations if called upon under the change of law protection agreement (CLPA)?]
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
[Any surety in a similar circumstance would want to know the nature and extent of the obligations incurred and to be incurred. That information is intended to allow the province to ensure compliance with the Parameters. Please provide an alternative proposal that meets OPGs requirements and still provides adequate information for the Province.]
-the negative pledge with respect to the exercise of certain options on the debt
[The idea is that if there is optionality in favour of the financing entity, and the exercise would affect the payment profile under the CLPA, such an exercise following a Protection Event should not affect the Province's payment obligations. In effect, the payment schedule will crystalize and cannot be accelerated or extended once the province becomes obligated to pay, following a Protection Event.]
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
[The Province needs to understand the overall credit picture of the financing entity since it will become a creditor (through subrogation) if it is called on to perform. Exclusions are narrowly defined and should be minimal in practice.]

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have.
[These checks and balances are in-line with the province not writing a "blank cheque" in relation to future incurrences. Prudent sureties would be expected to exercise diligence - indeed to do less could be evidence of interdependence and non-arm's length terms, which presumably would be unhelpful to E&Y's analysis. ] Please also advise if the Province's accountants have reviewed the proposal.
[The Province's accountants are involved in this process and are also reviewing the proposal]

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated.

[The OFHPA will involve very significant and complex financings. The process is intended to provide an appropriate level of third party enquiry given the size and scale of the financing program to the province and in order to ensure the issuances are within the Parameters. ] From our perspective, as drafted, OPG will likely have to seek Provincial approval
[No approval is contemplated or expected by the Province, except if the incurrence is outside of the pre-agreed boundaries.] on each debt issuance (which weakens the accounting as discussed above)
[An explanation of the relevant accounting principles that E&Y has expressed concern about would assist the province to understand E&Y'S concerns. Also, a detailed list of any particular troublesome requirements would be helpful, with drafting suggestions as appropriate] [The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself.
[From the dealers' perspective, the three listed requirements (namely, (1) quantum under the program limit (2) delivery of the OPG certificate (3) absence of contrary notice from the Province) can be easily and objectively verified by the dealers. These process requirements should be reflected in the incurrence procedures as a check/balance at the relevant time, given that the province will not otherwise be directly involved in the incurrence process but will be obligated under the CLPA] Setting aside the mechanics of how we get there, the dealers want

comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement.

[As noted above, the three listed requirements can be easily and objectively confirmed by the dealers prior to a closing. inaccuracies or other failures within the certification process will not negate the Province's obligations] We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met.

[As noted, this due diligence check/balance is how the province will ensure the issuances satisfy the Parameters. It is anticipated that the Ministers will see this process as significant to the exercise of their authorities under OFHPA 5(3). Ultimately, the Province will depend on OPG, which is why the delivery of a certificate, without being impugned by an accuracy, is the contemplated adherence condition - rather than making the confirmation of certificate accuracy a condition, which we assume would be unwelcome by the underwriters.] The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

[The Province wants an actual certificate to be delivered to it (not just the indenture trustee) as part of the closing process. Also, the program limit and failsafe disapproval notice are considered to be important safeguards for the province]

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.
- [In the case of details not known at the time the OPG certificate is to be delivered (which will be expected to occur close to closing), it should be sufficient to indicate the process by which those details will be finalized. For example, it would be sufficient to say "interest rates to be set on or about [date] based on underwriting syndicate pricing indications".]

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- [The proposal uses the specific defined terms from the OFHPA and regulation, in order to tie back to the statute and appropriately narrow the scope to the obligations that are reasonably known to require protection from the province. Considerable thought has been given to the approach reflected in the province's proposal. The Province wishes to focus on each inclusion that requires the support arrangements, which should then be net of available/free cash flows, set-offs, etc. Please provide specific comments on any specific items of concerns.]
- We'd like to understand the reason OPG's management fees have been excluded. [This is still an open question under consideration.] We assume you do not intend for OPG's

reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? [Under consideration] Please advise why taxes are being excluded?

[CRA does not require/is not entitled by law to the benefit of the protection arrangement. Please explain the logic of the request to include taxes]

- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

[For the Province's support arrangement to apply to an obligation, the quantum of the obligation must be factored into the program maximum test. if the obligation is a contingent obligation, the province's obligations must be capped so that the amount of the cap can be factored into the program limit test]

- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

[In the interest of time, please provide any other detailed comments you may have on the September 27th version of the proposal as soon as possible]

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 12, 2017 9:18:11 AM |

I've scheduled a meeting to discuss today at 3:00pm.

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, October 11, 2017 2:33 PM
**To:** ASHBOURNE, STEPHEN ; Mark Donaldson (MOF) ; Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Gavin He ; Anis Hirani ; John Kim ; Veinot, Cindy (TBS)

**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Please see attached some responses to the Tory's comments drafted by Stephen Ashbourne, for discussion at our meeting.
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** October 10, 2017 1:35 PM
**To:** 'ASHBOURNE, STEPHEN'; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
All,
After reviewing OPGs response to the proposed adherence process, we wonder if a discussion of some of the accounting principles that are at issue would be helpful in order for us to consider their response and our next steps.
Please let us know if this approach makes sense, and perhaps the OFA can put together a meeting in order to discuss these issues.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)

**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards,
Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com | Twitter | Unsubscribe**
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Reply to all to get Cindy V. back on this email thread.
Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.
One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.
Once this group has had a chance to review we can schedule a call or compile any comments before

getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Anna Strathy; Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Tuesday, October 24, 2017 1:00:26 PM |
| **Attachments:** | 12917730-v1-Questions (Adherence Conditions).docx |

Further to OPG's response to our proposals, please find attached a discussion document drafted by our outside legal counsel Stephen Ashbourne and based on discussions amongst our Provincial legal teams.

This document sets out a number of questions that we need to consider and answer in order to respond to OPG with the Province's position.

A meeting amongst this group would be useful to discuss these issues and to inform a response to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo

have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.
We would be happy to discuss further when you have had a chance to review.
Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.
Many thanks,
Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption

Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres

personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Confidential legal advice subject to solicitor-client privilege**

October 23, 2017

**Questions for MOE and OFA to consider regarding OPG's Proposed Adherence Terms**

A. Scope of Province's Obligations under the Change of Law Protection Agreement (**CLPA**)

1. On a Protection Event, should the Province become responsible for the payment of taxes (if any) owing by the Financing Entity?

2. On a Protection Event, should the Province become liable to pay amounts owing by the Financing Entity to OPG (e.g., FSM fees and expenses)?

3. On a Protection Event, should all available funds (e.g., funds accumulated in sinking funds) be immediately applied to reduce the amount that the Province would be liable for under the CLPA?

4. Should the Province set a "Protection Agreement Maximum" (previously called the "Program Maximum") that measures and relates only to "principal amounts"? In other words, should the limitation be tied only to principal obligations, while the Province's actual obligations would automatically extend, without specific quantum limits, to the other payment obligations under "funding obligations" (e.g., interest, swaps, standby liquidity commitment fees, servicer fees and expenses)?

5. Is the Province comfortable guaranteeing contingent obligations (e.g., indemnity obligations) of the Financing Entity? If so, should the Province require that such contingent obligations be "capped" within the funding obligation itself or should the exposure of the Province be otherwise limited under the CLPA?

6. Should the Province be required to deposit funds to meet sinking fund or collateral deposits (i.e., deposit obligations incorporated in the financing structure on the basis that the "clean energy" cash flows will service the obligations, rather than the Province), notwithstanding that the Province would have become primarily liable for payment obligations under the CLPA?

B. Adhesion

7. Is the Province okay splitting the maximum exposure limitations and "process-related" matters (see below) into a separate agreement - away from the terms of the agreement under which the Province's payment obligations would bind the Province opposite the Indenture Trustee? OPG proposes this in order to keep the optics of the CLPA as simple and straightforward as possible. In other words, is the Province prepared to leave all of the important details regarding what OPG is supposed to do before incurring an obligation that binds the Province to a side agreement with OPG, that is opaque to the Indenture Trustee and Underwriters at the time a funding obligation is incurred and not requiring any third party to have notice or regard to the Province's requirements?

8. OPG proposes that delivery of an officers' certificate to a third party, in OPG's capacity as FSM, will in and of itself bind the Province under the CLPA. That certificate would simply indicate that the Province is bound under the CLPA with respect to the specified funding obligation. It would not be addressed to the Province (although a pre-closing certificate is contemplated to be delivered to the Province) and the "Protection Agreement Maximum" concept would not be incorporated as a specific condition (other

than to the extent that OPG is bound to the Province under the side agreement with the Province). Is this acceptable to the Province? Does this raise any governance/authority issues for the Province (e.g., limit on incurrence needing to be specifically confirmed at closing? scope of permitted delegation to bind? FAA compliance?)

C. "Protection Agreement Maximum" (formerly "Program Maximum" (**PAM**)

9. OPG proposes that the PAM will be determined based on a mechanical calculation and without any real discretion on the part of the Province to set or object to the PAM. Is this acceptable to the Province?

10. OPG's proposed mechanical process to determine PAM would be based on OPG's 24 month forecast (estimate) of payments to be made by the Financing Entity. So long as that forecast (and any refresh) is consistent with the "Financing Plan" (also prepared by OPG) and is "reasonably expected to align with the fair allocation amount", the Province will be required to accept the PAM based on OPG's forecast – i.e., no discretion to reject or modify the aggregate amount of the Province's commitment initially or from time to time. Is the Province prepared to tie its CLPA obligation automatically to the operation of the OFHPA in this way, without review and with perpetual effect?

11. Is the proposed mechanical link to the OFHPA calculations consistent with the OIC or other governance requirements applicable to the Province's authority to approve the CLPA?

12. Is the initial 24 month forecast period appropriate (e.g., 2.5B x 2 – large)? Is OPG's proposed refresh of the PAM (mechanically tied to the new forecast), 9 to 12 months prior to the end of the 24 month forecast period, appropriate?

D. "Process-Related" Matters

13. Assuming the Province is okay with the arrangements described in question 7, above, we would envision a mechanism where the Province could give the Indenture Trustee notice of a breach (if known) by OPG of the PAM or process-related side agreement, and that such a notice would have the effect of cutting off the application of the CLPA for any future incurrences unless the Province further agrees otherwise. Does the Province agree that this sort of failsafe is essential? Note that OPG's suggestion has been that no pre-incurrence non-adherence/failsafe provision be provided, in order to allow the Province to provide notice that the CLPA will not apply to a pending/proposed incurrence.

14. Does the Province need to contemplate other scenarios where the CLPA would become ineffective in respect of future incurrences, such as:

    a. an OPG change of control

    b. a policy-based determination by a future government

    c. an unanticipated circumstance, such as the incurrence by the Financing Entity of assessed tax liabilities, indemnity payments, "increased costs", rating downgrades, offering disclosure-based claims, defaults under the program,

insolvency of a major counterparty (e.g., swap counterparty or services provider), etc.

d. a discretionary circumstance where the Province decides it no longer wishes to be liable under the CLPA?

We expect that OPG would push back so that any suspension of new obligations by the Province would not hamper OPG's ability to complete an anticipated/needed refinancing.

15. Does the Province have any reservations about letting OPG at any time provide a binding certificate to third parties regarding adherence, which would be determinative of the Province's obligations. What conditions for this sort of certificate would make sense (e.g., preview and consent by the Province)? Does this proposal raise any governance/authority issues for the Province (e.g., scope of delegation; FAA compliance)?

16. If the Province is prepared to be liable for taxes owing by the Financing Entity (see question 1, above), what oversight, assurances, documentation and reporting regarding the potential for entity-level taxes should the Province require (if any)?

17. OPG is proposing that the Province will receive a certificate prior to the Financing Entity incurring a funding obligation, that sets out "the material terms of the funding obligations pertaining to the principal amount, pricing and third party fees". Is that a sufficient amount of detail, or would the Province like to specifically itemize its information expectations, to cover things such as:

    a. details respecting any principal obligation, such as:

        i. the amount, timing and conditions of repayments (including any redemption or extension rights)

        ii. the basis for OPG's expectations regarding the availability of any related refinancings

        iii. any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the principal obligation

        iv. the rating (if any) contemplated to be attributed to the principal repayment of the funding obligation

        v. details respecting any redemption rights, including the nature and conditions applicable to any exercise and OPG's expected basis for determining whether or not to exercise a redemption right, option or privilege;

    b. details respecting interest obligations, such as:

        i. the anticipated interest or discount rate or rates (including default rates)

        ii. the timing/frequency/conditions of coupon payments

iii. any required deposits to be made into a finance reserve account or supplemental account

iv. the availability of any funding rebates in order to provide for payment of interest

v. the rating (if any) contemplated to be attributed to the interest obligation;

c. details respecting any hedging obligation (e.g., interest or FX swaps, options or other derivatives), such as:

i. the name of the counterparty and credit details

ii. the credit ratings (if any) of the payor(s)

iii. the risks sought to be mitigated by the derivative

iv. anticipated circumstances (if any) in which the derivative may not achieve such mitigation or be subject to early termination

v. whether collateral posting requirements will apply;

d. details respecting other funding obligations, such as:

i. the payee

ii. the timing and any conditions of payments

iii. any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations

iv. in the case of a contingent obligation (e.g., indemnities), the nature and extent of any contingency affecting the payment obligation, the circumstances in which a payment obligation may arise and any specified maximum claim amount

e. assuming that the Province would be liable for capital, reserve or supplementary account deposit obligations (see question 6, above), details respecting the schedule for such deposits and the conditions for the application of such amounts to pay such amounts and the related priorities for application.

18. OPG (and presumably OPG's accountants) is contemplating that the Province will be provided transaction documentation "in substantially final form" and that the Province will not be entitled to provide input "other than in its capacity as obligor under the [CLPA]". In other words, assuming that the CLPA is signed in advance, the Province will have no real opportunity to comment on the forms of transaction documents to be used, and will

have a limited opportunity to "not accept" [1] the documentation. Can the Province live with these limitations?

19. The proposed OPG certificate (pre-incurrence) would include an attestation by OPG regarding the use of pre-reviewed documentation. The test for conformity of the to-be-used documentation, compared to the pre-reviewed documentation, would focus only on whether "the covenants of the Financing Entity are no more onerous in any material respect" and that the "events of default" are consistent "in all material respects". Is the limited scope of this conformity test acceptable, or should it be broadened and cover specific items such as:

    a. no differences in the timing of or circumstances under which payments are or may become due (for example, as a result of any termination, wind-up, liquidation or realization)

    b. no differences that could affect the Province's rights of subrogation or interests as a subrogee

    c. with respect to the anticipated form of series specific documents (as opposed to the upfront terms of program-wide "master" documents), confirming that the variable terms set forth in the proposed documents are as reasonably contemplated in the reviewed forms, having regard to such matters as:

        i. the type of instrument to be issued (i.e., debt (bullet vs. amortizing), equity-linked, pass-through instruments, etc.)

        ii. the scope of the related obligations (e.g., redemption or extension features or other optionality)

        iii. the extent of the related obligations (e.g., limited recourse features, limitations on indemnities, etc.)

        iv. the timing, conditions and circumstances in which payment obligations may arise,

    but making it clear that conformity would not include a comparison to the particular financial terms, rates, levels and parameters of the obligations other than if the reviewed forms specify specific requirements, limitations or parameters.

20. How much time is sufficient for the Province:

    a. to do an initial review of the main transaction documentation (including forms of series-specific documents), which would set the acceptable pattern for future

---

[1] Note that the proposed OPG language is not crystal clear that the Province can reject the reviewed documentation, which we expect is merely drafting, but that will need to be confirmed assuming the Province wishes to work within the OPG/Tory mark-up.

issuances? The proposal is 15 BDs, although that does not seem to make sense given that OPG proposes that the Province must confirm acceptance of the terms within 15 BDs of receipt of the documentation

b. to do a review of any changes to the main transaction documentation (including forms of series-specific documents), which would reset the acceptable pattern for future issuances? The proposal is to receive proposed amendments at least 15 BDs prior to first use, and the Province would confirm acceptance of the terms within 15 BDs of receipt of the documentation

c. to review applicable details of a proposed funding obligation in advance of an incurrence (proposal is 10BDs)?

21. What other items should be incorporated into the timeline from the Province's perspective?

E. Information, Reporting and Other Covenants

22. OPG proposes to provide the Province with an applicable "Financing Plan" only after an incurrence. Does the Province need to see this document as it is issued and changed, rather than only after the time of an incurrence?

23. OPG proposes to provide the Province with any actual offering/disclosure documents only after it is used. Does the Province need to have input into offering/disclosure document before use or dissemination (e.g., the description of the CLPA)?

24. OPG has limited its negative covenant on elections by the Financing Entity following a Protection Event to actions that would accelerate obligations. Should this be broader to cover extensions or other consensual changes that could affect the obligations (e.g., creditor concessions).

F. Parties

25. Will it be sufficient for the CLPA (and any procedural side-letter) to be signed by OPG, acting solely in its capacity as "financial services manager" (i.e., with OPG's liability being limited by the terms of the related management or administrative agreement)? How does this interplay with any other indemnities or exculpatory provisions that the Province is anticipating for OPG (corporate) and its officers?

26. Who from OPG should sign the officer's certificate? The OPG proposal is 2 "executive officers".

27. OPG proposes that a failure to comply with the PAM or "approval process" will not result in any breach. Assuming that OPG is in fact proposing that its failure would have no consequences, including as between the Province and OPG whatsoever, are the process aspects of the OPG proposal even meaningful to the Province?

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | ASHBOURNE, STEPHEN; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 11, 2017 2:33:30 PM |
| **Attachments:** | 12915947-v3-Torys comments on Change of Law Protection Agreement (10617)....docx |

Please see attached some responses to the Tory's comments drafted by Stephen Ashbourne, for discussion at our meeting.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** October 10, 2017 1:35 PM
**To:** 'ASHBOURNE, STEPHEN'; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

All,

After reviewing OPGs response to the proposed adherence process, we wonder if a discussion of some of the accounting principles that are at issue would be helpful in order for us to consider their response and our next steps.

Please let us know if this approach makes sense, and perhaps the OFA can put together a meeting in order to discuss these issues.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards, Steve

Stephen R. Ashbourne
Partner

stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.

Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch

Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

[NOTE TO DRAFT: CONFIRM THAT TORYS IS REFERRING TO THE OFA/MOE PROPOSAL FROM SEPTEMBER 27TH. ]

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

**Accounting Issues:**
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input [THERE IS MINIMAL OVERSIGHT AND INPUT FROM THE PROVINCE SO LONG AS THE PRE-AGREED SCOPE AND PARAMETERS ARE ADHERED TO] on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence [THE PROPOSAL IS THAT BASIC INFORMATION REGARDING AN INCURRENCE WILL BE PROVIDED TO ENABLE THE PROVINCE TO (1) UNDERSTAND THE NATURE AND SCOPE OF THE INCURRENCE, TO ENABLE THE PROVINCE TO ADDRESS ACCOUNTING, REPORTING AND INTERNAL GOVERNANCE CONSIDERATIONS AND (2) TO BE SATISFIED THAT THE PROPOSED INCURRENCES ARE IN-LINE WITH THE PRE-AGREED PARAMETERS (THE "OBJECTIVES"). THE INTENTION IS NOT TO CURTAIL INCURRENCES THAT FOLLOW THE PRE-AGREED APPROACH.]
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt [AS THE ENTITY RUNNING THE PROGRAM, OPG WILL BE EXPECTED TO PROVIDE THE PROVINCE WITH INFORMATION SUFFICIENT TO ENABLE THE PROVINCE TO ACHIEVE THE OBJECTIVES. THE DELIVERY OF A CERTIFICATE IN AN AGREED FORM, JUST PRIOR TO THE TIME OF THE INCURRENCE, IS MEANT TO CREATE A BRIGHTLINE TEST FOR THE FINANCING ENTITY'S COUNTERPARTIES TO KNOW THAT, SO LONG AS THE CERTIFICATE HAS BEEN DELIVERED (EVEN IF IT'S INACCURATE), THE PROVINCE WILL BE BOUND. AS YOU SUGGEST BELOW, ANY INACCURACY WILL GIVE RISE TO CONSIDERATIONS BETWEEN THE PROVINCE AND OPG. THE DELIVERY OF THE CERTIFICATE AT THE TIME OF AN INCURRENCE IS CONSIDERED AN IMPORTANT DUE DILIGENCE CONFIRMATION FOR THE PROVINCE.
WHAT IS THE BASIS FOR E&Y EXPRESSING A RESERVATION REGARDING THE PROVINCE HAVING ACCESS TO UNDERLYING INFORMATION ABOUT THE

"APPROVED OBLIGATIONS", WHICH IN TURN WILL DEFINE THE SCOPE OF THE PROVINCE'S OWN OBLIGATIONS IF CALLED UPON UNDER THE CHANGE OF LAW PROTECTION AGREEMENT (CLPA)?]

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) [ANY SURETY IN A SIMILAR CIRCUMSTANCE WOULD WANT TO KNOW THE NATURE AND EXTENT OF THE OBLIGATIONS INCURRED AND TO BE INCURRED. THAT INFORMATION IS INTENDED TO ALLOW THE PROVINCE TO MEET THE OBJECTIVES.]

-the negative pledge with respect to the exercise of certain options on the debt [THE IDEA IS THAT IF THERE IS OPTIONALITY IN FAVOUR OF THE FINANCING ENTITY, AND THE EXERCISE WOULD AFFECT THE PAYMENT PROFILE UNDER THE CLPA, SUCH AN EXERCISE FOLLOWING A PROTECTION EVENT SHOULD NOT AFFECT THE PROVINCE'S PAYMENT OBLIGATIONS. IN EFFECT, THE PAYMENT SCHEDULE WILL CRYSTALIZE AND CANNOT BE ACCELERATED OR EXTENDED ONCE THE PROVINCE BECOMES OBLIGATED TO PAY, FOLLOWING A PROTECTION EVENT.]

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement [THE PROVINCE NEEDS TO UNDERSTAND THE OVERALL CREDIT PICTURE OF THE FINANCING ENTITY SINCE IT WILL BECOME A CREDITOR (THROUGH SUBROGATION) IF IT IS CALLED ON TO PERFORM. EXCLUSIONS ARE NARROWLY DEFINED AND SHOULD BE MINIMAL IN PRACTICE.]

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. [THESE CHECKS AND BALANCES ARE IN-LINE WITH THE PROVINCE NOT WRITING A "BLANK CHEQUE" IN RELATION TO FUTURE INCURRENCES. PRUDENT SURETIES WOULD BE EXPECTED TO PURSUE THE OBJECTIVES - INDEED TO DO LESS COULD BE EVIDENCE OF INTERDEPENDENCE AND NON-ARM'S LENGTH TERMS, WHICH PRESUMABLY WOULD BE UNHELPFUL TO E&Y'S ANALYSIS. ] Please also advise if the Province's accountants have reviewed the proposal. [THE PROVINCE'S ACCOUNTING PROFESSIONALS ARE INVOLVED IN THIS PROCESS, INCLUDING IN REVIEWING THESE RESPONSES]

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. [THE OFHPA WILL INVOLVE VERY SIGNIFICANT AND COMPLEX FINANCINGS. THE PROCESS IS INTENDED TO PROVIDE AN APPROPRIATE LEVEL OF THIRD PARTY ENQUIRY GIVEN THE SIZE AND SCALE OF THE FINANCING PROGRAM TO THE PROVINCE AND IN ORDER TO MEET THE OBJECTIVES] From our perspective, as drafted, OPG will likely have to seek Provincial approval [NO APPROVAL IS CONTEMPLATED OR EXPECTED BY THE PROVINCE, EXCEPT IF THE INCURRENCE IS OUTSIDE OF THE PRE-AGREED BOUNDARIES. THE ONUS WILL BE ON THE PROVINCE TO REVIEW THE SUMMARY MATERIALS PROVIDED BY OPG AND TO IDENTIFY ANY MATERIAL DEPARTURES FROM THE PRE-AGREED APPROACH TO INCURRENCES] on each debt issuance (which weakens the accounting as discussed above) [AN EXPLANATION OF THE RELEVANT ACCOUNTING PRINCIPLES THAT E&Y HAS EXPRESSED CONCERN ABOUT

WOULD ASSIST THE PROVINCE TO UNDERSTAND E&Y'S CONCERNS. IS THERE AN ACCOUNTING STATEMENT OR PUBLICATION THAT ELABORATES ON THESE MATTERS? ALSO, A DETAILED LIST OF ANY PARTICULAR TROUBLESOME REQUIREMENTS WOULD BE HELPFUL, WITH DRAFTING SUGGESTIONS AS APPROPRIATE] [The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. [FROM THE DEALERS' PERSPECTIVE, THE THREE LISTED REQUIREMENTS (NAMELY, (1) QUANTUM UNDER THE PROGRAM LIMIT (2) DELIVERY OF THE OPG CERTIFICATE (3) ABSENCE OF CONTRARY NOTICE FROM THE PROVINCE) CAN BE EASILY AND OBJECTIVELY VERIFIED BY THE DEALERS. THESE PROCESS REQUIREMENTS SHOULD BE REFLECTED IN THE INCURRENCE PROCEDURES AS A CHECK/BALANCE AT THE RELEVANT TIME, GIVEN THAT THE PROVINCE WILL NOT OTHERWISE BE DIRECTLY INVOLVED IN THE INCURRENCE PROCESS BUT WILL BE OBLIGATED UNDER THE CLPA] Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. [AS NOTED ABOVE, THE THREE LISTED REQUIREMENTS CAN BE EASILY AND OBJECTIVELY CONFIRMED BY THE DEALERS PRIOR TO A CLOSING. INACCURACIES OR OTHER FAILURES WITHIN THE CERTIFICATION PROCESS WILL NOT NEGATE THE PROVINCE'S OBLIGATIONS] We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. [AS NOTED, THIS DUE DILIGENCE CHECK/BALANCE IS HOW THE PROVINCE WILL MEET THE OBJECTIVES. IT IS ANTICIPATED THAT THE MINISTERS WILL SEE THIS PROCESS AS SIGNIFICANT TO THE EXERCISE OF THEIR AUTHORITIES UNDER OFHPA 5(3). ULTIMATELY, THE PROVINCE WILL DEPEND ON OPG, WHICH IS WHY THE DELIVERY OF A CERTIFICATE, WITHOUT BEING IMPUGNED BY AN ACCURACY, IS THE CONTEMPLATED ADHERENCE CONDITION - RATHER THAN MAKING THE CONFIRMATION OF CERTIFICATE ACCURACY A CONDITION, WHICH WE ASSUME WOULD BE UNWELCOME BY THE UNDERWRITERS.] The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification. [THE PROVINCE WANTS AN ACTUAL CERTIFICATE TO BE DELIVERED TO IT (NOT JUST THE INDENTURE TRUSTEE) AS PART OF THE CLOSING PROCESS. ALSO, THE PROGRAM LIMIT AND FAILSAFE DISAPPROVAL NOTICE ARE CONSIDERED TO BE IMPORTANT SAFEGUARDS FOR THE PROVINCE]

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement. [IN THE CASE OF DETAILS NOT KNOWN AT THE TIME THE OPG

CERTIFICATE IS TO BE DELIVERED (WHICH WILL BE EXPECTED TO OCCUR CLOSE TO CLOSING), IT SHOULD BE SUFFICIENT TO INDICATE THE PROCESS BY WHICH THOSE DETAILS WILL BE FINALIZED. FOR EXAMPLE, IT WOULD BE SUFFICIENT TO SAY "INTEREST RATES TO BE SET ON OR ABOUT [DATE] BASED ON UNDERWRITING SYNDICATE PRICING INDICATIONS".]

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered. [THE PROPOSAL USES THE SPECIFIC DEFINED TERMS FROM THE OFHPA AND REGULATION, IN ORDER TO TIE BACK TO THE STATUTE AND APPROPRIATELY NARROW THE SCOPE TO THE OBLIGATIONS THAT ARE REASONABLY KNOWN TO REQUIRE PROTECTION FROM THE PROVINCE. CONSIDERABLE THOUGHT HAS BEEN GIVEN TO THE APPROACH REFLECTED IN THE PROVINCE'S PROPOSAL. THE PROVINCE WISHES TO FOCUS ON EACH INCLUSION THAT REQUIRES THE SUPPORT ARRANGEMENTS, WHICH SHOULD THEN BE NET OF AVAILABLE/FREE CASH FLOWS, SET-OFFS, ETC. PLEASE PROVIDE SPECIFIC COMMENTS ON ANY SPECIFIC ITEMS OF CONCERNS.]
- We'd like to understand the reason OPG's management fees have been excluded. [THIS IS STILL AN OPEN QUESTION UNDER CONSIDERATION.] We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? [UNDER CONSIDERATION] Please advise why taxes are being excluded? [CRA DOES NOT REQUIRE/IS NOT ENTITLED BY LAW TO THE BENEFIT OF THE PROTECTION ARRANGEMENT. PLEASE EXPLAIN THE LOGIC OF THE REQUEST TO INCLUDE TAXES]
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here. [FOR THE PROVINCE'S SUPPORT ARRANGEMENT TO APPLY TO AN OBLIGATION, THE QUANTUM OF THE OBLIGATION MUST BE FACTORED INTO THE PROGRAM MAXIMUM TEST. IF THE OBLIGATION IS A CONTINGENT OBLIGATION, THE PROVINCE'S OBLIGATIONS MUST BE CAPPED SO THAT THE AMOUNT OF THE CAP CAN BE FACTORED INTO THE PROGRAM LIMIT TEST]
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document. [IN THE INTEREST OF TIME, PLEASE PROVIDE ANY OTHER DETAILED COMMENTS YOU MAY HAVE ON THE SEPTEMBER 27TH VERSION OF THE PROPOSAL AS SOON AS POSSIBLE]

**From:** Mike Manning
**To:** Tobias P. Whitfield (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Wednesday, October 11, 2017 1:45:33 PM

---

Hi Tobias:
Happy to participate, but will have to defer to OPCD on accounting impacts as Ken has indicated.

Regards, Mike

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Tuesday, October 10, 2017 1:35 PM
**To:** ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

All,

After reviewing OPGs response to the proposed adherence process, we wonder if a discussion of some of the accounting principles that are at issue would be helpful in order for us to consider their response and our next steps.

Please let us know if this approach makes sense, and perhaps the OFA can put together a meeting in order to discuss these issues.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos

(OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

---

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.

Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>;

Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF) |
| **Cc:** | Veinot, Cindy (TBS); Mark Donaldson (MOF); Mike Manning; Hosick, Sarah (TBS); Malle Hanslep (MOF); Ronald Kwan |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 11, 2017 11:10:31 AM |

Hi Toby
If the main purpose of the meeting is to discuss the accounting principles then I suggest that OPCD schedule same since the OFA's primary focus is on the financing. I am cc'ing Sarah Hosick, Cindy's EA, on the assumption that Cindy agrees with me.
Thanks
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Tuesday, October 10, 2017 1:35 PM
**To:** ASHBOURNE, STEPHEN ; Mark Donaldson (MOF) ; Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Gavin He ; Anis Hirani ; John Kim ; Veinot, Cindy (TBS)

**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
All,
After reviewing OPGs response to the proposed adherence process, we wonder if a discussion of some of the accounting principles that are at issue would be helpful in order for us to consider their response and our next steps.
Please let us know if this approach makes sense, and perhaps the OFA can put together a meeting in order to discuss these issues.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards,
Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.

Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)

**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | ASHBOURNE, STEPHEN; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Tuesday, October 10, 2017 1:35:29 PM |

All,

After reviewing OPGs response to the proposed adherence process, we wonder if a discussion of some of the accounting principles that are at issue would be helpful in order for us to consider their response and our next steps.

Please let us know if this approach makes sense, and perhaps the OFA can put together a meeting in order to discuss these issues.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF);

Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.

Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this

proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of

Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please

contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Tobias P. Whitfield (MOF) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY" |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 06, 2017 5:58:28 PM |
| **Attachments:** | Fair Hydro -- Change of Law Assumption Agreement.msg |

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement

itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima ; Feldman, Michael ; Mansoori, Nina ; 'WONG Leslie -LAWDIV' ; LEE John -TREASURY ; RYFA Ken -TREASURY
**Cc:** Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Hanslep, Malle (MOF) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all

parties.
In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:
(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the

date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Ramchandani, Rima [rramchandani@torys.com]
**To:** 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
**CC:** LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Feldman, Michael [mfeldman@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Mansoori, Nina [nmansoori@torys.com]
**Subject:** Fair Hydro -- Change of Law Assumption Agreement
**Date:** Tuesday, September 19, 2017 21:55:12

---

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Mike Manning; Ken Kandeepan; Ronald Kwan; Keley Katona (ENERGY); Scott Nelms (ENERGY) |
| **Cc:** | Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Thursday, October 05, 2017 8:23:58 AM |

Hi Malle, I haven't seen any correspondence from OPG or Torys on this.
Anna

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Wednesday, October 04, 2017 5:57 PM
**To:** Mike Manning ; Ken Kandeepan ; Ronald Kwan ; Anna Strathy ; Keley Katona (ENERGY) ; Scott Nelms (ENERGY)
**Cc:** Tobias P. Whitfield (MOF) ; Thouin, Alena (ENERGY)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Has anyone heard from OPG or Torys regarding this since Toby's email? Steve Ashbourne checked in with us to find out as he has not heard anything either.
Thanks.
Malle

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 27, 2017 4:21 PM
**To:** Ramchandani, Rima; Feldman, Michael; Mansoori, Nina; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY
**Cc:** Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.
Many thanks,
Rima
Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants

of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Ramchandani, Rima; Feldman, Michael; Mansoori, Nina; "WONG Leslie -LAWDIV"; LEE John -TREASURY; RYFA Ken -TREASURY |
| **Cc:** | Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com" |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, September 27, 2017 4:21:40 PM |
| **Attachments:** | 12913400-v4-OFHPA - Province Support - Obligor Approval Process.docx |

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants

and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in

accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than • Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

[3] Confirm arrangements with OPG.

(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will

arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than • Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than • Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than • Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under

Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | ASHBOURNE, STEPHEN; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, September 27, 2017 2:00:14 PM |
| **Attachments:** | 12913400-v4-OFHPA - Province Support - Obligor Approval Process.docx<br>12913400-vpdf-OFHPA - Province Support - Obligor Approval Process.pdf |

I believe these changes reflect our conversation earlier today.
I propose sending this over to OPG today, but will wait until after 4pm to do so, in case anyone has any further comments or issues that need to be addressed.
Please let me know by 4pm if you have anything to add.
Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** September 27, 2017 12:01 PM
**To:** Donaldson, Mark (TBS); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

Blakes
**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)

**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.

Thanks.

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss

those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material

program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than • Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

[3] Confirm arrangements with OPG.

(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will

arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than • Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than • Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than • Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under

Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account ~~or~~, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account ~~or~~, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account ~~or~~, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][~~2~~3], 

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

[~~2~~3] Confirm arrangements with OPG.

other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any ~~redemption~~ amounts that are or become payable ~~at~~as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account ~~or~~, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than ~~[3]~~• Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

      (ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the

availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; ~~and~~ (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial

services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes ~~or~~, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within ~~2~~• Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation ~~related to~~for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[~~3~~4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than ~~20~~• Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

[~~3~~4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note ~~or~~, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes ~~or~~, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than ~~10~~• Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than ~~[2]~~• Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the ~~specific~~particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than ~~[20]~~• Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG,

the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than ~~20~~• Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than ~~5~~• Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) ~~(b)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment ~~or~~, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved

Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) ~~(c)~~ if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) ~~(d)~~ OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

Document comparison by Workshare Compare on Wednesday, September 27, 2017 11:56:42 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2024/12913400/3 |
| Description | TOR_2024-#12913400-v3-OFHPA_-_Province_Support_-_Obligor_Approval_Process |
| Document 2 ID | PowerDocs://TOR_2024/12913400/4 |
| Description | TOR_2024-#12913400-v4-OFHPA_-_Province_Support_-_Obligor_Approval_Process |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 58 |
| Deletions | 33 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 91 |

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Mark Donaldson (MOF); Tobias P. Whitfield (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, September 27, 2017 12:01:02 PM |
| **Attachments:** | 12913400-v4-OFHPA - Province Support - Obligor Approval Process.DOCX<br>12913400-vpdf-OFHPA - Province Support - Obligor Approval Process.PDF |

Toby, as just discussed, here is the revised version of the adherence process description, together with a blackline to the last internal version. Please feel free to call if there is any needed follow-up. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
**Sent:** Friday, September 22, 2017 1:37 PM
**To:** Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Reply to all to get Cindy V. back on this email thread.
Thanks.

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free

to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing

Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][3], other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any amounts that are or become payable as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than • Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

[3] Confirm arrangements with OPG.

(ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will

arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within • Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than • Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

[4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than • Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than • Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than • Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under

Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than • Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than • Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account ~~or~~, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account ~~or~~, finance reserve account or supplemental reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account, from a funding rebate[2] or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account ~~or~~, finance reserve account or supplemental reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Other Funding Obligations"); and

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][~~2~~3], 

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Incorporate alternative GA stream, as applicable, in relation to all covered amounts – including interest, derivative payments, other funding costs and expenses contemplated in paras. 3 to 6.

[~~2~~3] Confirm arrangements with OPG.

other than to the extent that funds are available for payment thereof from a finance reserve account or supplemental reserve account or from a funding rebate ("Third Party Expense Obligations"),

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any ~~redemption~~ amounts that are or become payable ~~at~~as a result of the exercise of an option of the financing entity following a Protection Event (e.g., redemption or extension rights), (b) amounts required to be deposited by or on behalf of the financing entity into any capital account ~~or~~, finance reserve account or supplemental reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than ~~[3]~~• Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments (including any redemption or extension rights), the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

      (ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the

availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; ~~and~~ (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial

services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes ~~or~~, bonds or other securities is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within ~~2~~• Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation ~~related to~~for the related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[~~3~~4] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than ~~20~~• Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

[~~3~~4] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note ~~or~~, bond or securities purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of any series of notes ~~or~~, bonds or securities to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing entity, including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than ~~10~~• Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than ~~[2]~~• Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the ~~specific~~particular financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not be bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than ~~[20]~~• Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following the date of such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG,

the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than ~~20~~• Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than ~~5~~• Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of such a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply and ensure compliance by any financing entity (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) OPG will promptly notify the Province of the creation of any funding obligation that OPG determines is not or would not be an Approved Obligation;

(c) ~~(b)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment ~~or~~, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved

Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected;

(d) ~~(c)~~ if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(e) ~~(d)~~ OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

Document comparison by Workshare Compare on Wednesday, September 27, 2017 11:56:42 AM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2024/12913400/3 |
| Description | TOR_2024-#12913400-v3-OFHPA_-_Province_Support_-_Obligor_Approval_Process |
| Document 2 ID | PowerDocs://TOR_2024/12913400/4 |
| Description | TOR_2024-#12913400-v4-OFHPA_-_Province_Support_-_Obligor_Approval_Process |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 58 |
| Deletions | 33 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 91 |

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Tuesday, September 26, 2017 1:06:22 PM |

Happy to participate as well.
Mike

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 25, 2017 5:13 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

I just wanted to follow up on this and see if there are any comments on this, or if there is an appetite to have a meeting to review the proposal before we send it back to OPG.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in

accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ramchandani, Rima |
| **Cc:** | Mansoori, Nina; Tobias P. Whitfield (MOF); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); STEPHEN.ASHBOURNE@blakes.com; LADAK Lubna -TREASURY; Emes, Aaron; Hill, Krista |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Tuesday, October 24, 2017 11:06:52 AM |

Thanks Rima. Would you please also circulate to Tom McKinlay in addition to the others noted below.

Malle

-----Original Message-----

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: October 23, 2017 7:32 PM

To: Hanslep, Malle (MOF)

Cc: Mansoori, Nina; Whitfield, Tobias P. (MOF); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com; LADAK Lubna -TREASURY; Emes, Aaron; Hill, Krista

Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Hi Malle, we have asked Osler to accelerate circulation of the draft supplemental indenture for the long term debt — we hope to have that by mid-week and will send it you on receipt. As with the supp for the short term debt, the draft will not have been reviewed by Torys or OPG but in the interests of time, we will circulate it to you concurrently. We will also start including you on any circulations of revised drafts of the other agreements. Unless we hear differently, we will include you, Toby, Alena and Steve.

Regarding timing, we understand that the short term facility would close very soon after the long term issuance (from a workload perspective, we are treating them as closing almost concurrently). Closing of the long term debt is targeted for the first week of December and closing of the short term debt is targeted for the second week of December. Marketing of the long-term debt would occur in late November but only once we have concluded the rating agency process. The dealers have advised us that the rating agencies will be interested in understanding the change of law agreement in particular, which is why we have been focused on having that agreement circulated and substantially settled with the dealers and their counsel as soon as possible.

Please feel free to reach out if you would like to discuss live.

Thanks,

Rima

Sent from my iPhone

On Oct 22, 2017, at 9:43 AM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>> wrote:

Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province should one of the events as set out in the term sheet occur. The Province has not determined whether the approach suggested to separate the two documents is appropriate. If it is the proposed long term financing that is planned to be done by year-end and there is a desire to substantially settle the terms of the Protection Agreement by the early November, I don't understand why a draft of the long term financing supplemental indenture would not be available for review yet.

When is it expected that the warehousing facility would be put in place?

Thanks.

Malle

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679 -----Original Message-----

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: October 21, 2017 11:28 PM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna - TREASURY'; Emes, Aaron; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=3-ROFertcOPK3o3K14tKgsWrtLCZ9JSQ5xgQ4sNS8bc&s=WP5x0DQ0Uaf2FFwi24rBLMoImr8GRTRKJpU4IZHHCQg&e=>

-----Original Message-----

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-21-17 8:53 AM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Cc: 'LEE John -TREASURY' <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima

<rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael
<mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka
<yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS)
<Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA)
<Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA)
<Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA)
<Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA)
<James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA)
<Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA)
<Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF)
<John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)
<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA)
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA)
<Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA)
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>;
'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Emes, Aaron
<aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina
<nmansoori@torys.com<mailto:nmansoori@torys.com>>

Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

777 Bay Street, 11th Floor

Toronto, ON, M5G 2C8

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Mansoori, Nina

Sent: Friday, October 20, 2017 10:23 AM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna - TREASURY'; Emes, Aaron; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Mansoori, Nina

Sent: October-18-17 9:53 AM

To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-13-17 4:47 PM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com><mailto:nmansoori@torys.com>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com><mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com><mailto:ken.ryfa@opg.com>>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com><mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com><mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com><mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com><mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca><mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca><mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca> <mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca><mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca><mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca><mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca> <mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca> <mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca> <mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca><mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca><mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca><mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca><mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca><mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca><mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca><mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca><mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca><mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca> <mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com> <mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com><mailto:lubna.ladak@opg.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca><mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: October 6, 2017 5:58 PM

To: Whitfield, Tobias P. (MOF)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna - TREASURY'

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence -that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt -the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) -the negative pledge with respect to the exercise of certain options on the debt -the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?

* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>
<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>
<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>
<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>
<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>
<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>
<mailto:ken.ryfa@opg.com>>

Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>
<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA)
<Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca><mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi
(OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca><mailto:Gadi.Mayman@ofina.on.ca>>; Kwan,
Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca><mailto:Ronald.Kwan@ofina.on.ca>>;
Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>
<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>
<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA)
<James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca><mailto:James.Devine@ofina.on.ca>>; Yep, Carlos
(OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca><mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna
(OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca><mailto:Anna.Strathy@ofina.on.ca>>; Cengarle,
John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca><mailto:John.Cengarle@ontario.ca>>; Kwan,
Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca><mailto:Ronald.Kwan@ofina.on.ca>>;
Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca><mailto:Keley.Katona@ontario.ca>>;
He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca><mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis
(OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca><mailto:Anis.Hirani@ofina.on.ca>>; Kim, John
(OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca><mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca><mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle
(MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca><mailto:Malle.Hanslep@ontario.ca>>; Thouin,
Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca><mailto:Alena.Thouin@ontario.ca>>;
McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>
<mailto:Tom.McKinlay@ontario.ca>>;
'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>
<mailto:STEPHEN.ASHBOURNE@blakes.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca><mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=3-ROFertcOPK3o3K14tKgsWrtLCZ9JSQ5xgQ4sNS8bc&s=WP5x0DQ0Uaf2FFwi24rBLMoImr8GRTRKJpU4IZHHCQg&e=><https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=3-ROFertcOPK3o3K14tKgsWrtLCZ9JSQ5xgQ4sNS8bc&s=WP5x0DQ0Uaf2FFwi24rBLMoImr8GRTRKJpU4IZHHCQg&e=

>

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=3-ROFertcOPK3o3K14tKgsWrtLCZ9JSQ5xgQ4sNS8bc&s=GDuixrePmY6ZDp5q8sxygoN1Xm96aNd2Oy6FAvjUbis&e= >

From: Ramchandani, Rima

Sent: September-19-17 9:55 PM

To: 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com> <mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca><mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca><mailto:Tobias.Whitfield@ontario.ca>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com><mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com><mailto:ken.ryfa@opg.com>>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com><mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com><mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com><mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com><mailto:nmansoori@torys.com>>

Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Ken Kandeepan; Tobias P. Whitfield (MOF); Mike Manning; Gadi Mayman; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, September 25, 2017 5:27:47 PM |

Agreed.
Ron

**From:** Ken Kandeepan
**Sent:** September-25-17 17:17
**To:** Tobias P. Whitfield (MOF) ; Mike Manning ; Gadi Mayman ; Ronald Kwan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Gavin He ; Anis Hirani ; John Kim
**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; stephen.ashbourne@blakes.com; Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Might be easier to have a quick meeting or tele conference.
Thanks
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 25, 2017 5:13 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
**Cc:** McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
I just wanted to follow up on this and see if there are any comments on this, or if there is an appetite to have a meeting to review the proposal before we send it back to OPG.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)

**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the

Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, September 25, 2017 5:17:03 PM |

Might be easier to have a quick meeting or tele conference.
Thanks
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 25, 2017 5:13 PM
**To:** Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Gavin He ; Anis Hirani ; John Kim
**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; stephen.ashbourne@blakes.com; Malle Hanslep (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
I just wanted to follow up on this and see if there are any comments on this, or if there is an appetite to have a meeting to review the proposal before we send it back to OPG.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.
One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.
Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may

be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, September 25, 2017 5:13:43 PM |

I just wanted to follow up on this and see if there are any comments on this, or if there is an appetite to have a meeting to review the proposal before we send it back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing

Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Ramchandani, Rima; "STEPHEN.ASHBOURNE@blakes.com"; Tobias P. Whitfield (MOF); Thouin, Alena (ENERGY) |
| **Cc:** | LEE John -TREASURY; RYFA Ken -TREASURY; "WONG Leslie -LAWDIV"; Feldman, Michael; Mansoori, Nina; Gadi Mayman; Mike Manning; Ken Kandeepan; Scott Nelms (ENERGY); Keley Katona (ENERGY); Ronald Kwan |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, September 25, 2017 12:48:03 PM |

Hi Rima,
We are reviewing this internally and anticipate providing you with detailed comments in the next few days. Thanks.
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Good morning all, just following up on our email below. Please let us know when we should expect your feedback.
Many thanks,
Rima
Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement
Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to

the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The

execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Donaldson, Mark (TBS) |
| **To:** | Tobias P. Whitfield (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, September 22, 2017 1:36:52 PM |

Reply to all to get Cindy V. back on this email thread.
Thanks.

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 22, 2017 11:41 AM
**To:** Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; Donaldson, Mark (TBS) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA)
**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.
One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.
Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.
Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement
Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.
We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation

before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires

concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Anis Hirani; John Kim |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Malle Hanslep (MOF) |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, September 22, 2017 11:41:12 AM |
| **Attachments:** | 12913400-v3-OFHPA - Province Support - Obligor Approval Process.docx |

Please see attached for discussion our draft proposal for an approval process. This proposal significantly fleshes out the issues and the process in much greater detail from the OPG proposal below.

One issue to note in particular is the process relating to the Program Maximum amount, and the proposed timing for addressing approvals relating to that amount.

Once this group has had a chance to review we can schedule a call or compile any comments before getting back to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 20, 2017 3:20 PM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA) (John.Kim@ofina.on.ca)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com; Hanslep, Malle (MOF)
**Subject:** FW: Fair Hydro -- Change of Law Assumption Agreement

Please see below an email from OPG's counsel setting out a proposed approval process setting out how the Provincial protection agreement would apply to any set of obligations of the Financing Entity.

We at MOF Legal along with Energy Legal and Stephen Ashbourne are in the process of reviewing their proposal and preparing comments. We will have significant comments and questions about this proposal, but wanted to give everyone a chance to review the OPG proposal so that we can discuss those comments as soon as we are ready to do so.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 19, 2017 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina

**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program

Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Adherence of the Change of Law Protection Agreement to Approved Obligations**

Words that are not defined below and that are defined in the OFHPA or otherwise in the General Regulation will have the meanings given in the OFHPA or the General Regulation, as applicable.

Approval Process

Subject to satisfaction of the conditions described under "Adherence Condition", below, the Change of Law Protection Agreement will apply (without duplication) in respect of the following "Specified Claims" (as defined in the Term Sheet) of the applicable financing entity (collectively, the "Approved Obligations"):

1. repayments[1], other than to the extent that funds are available for payment thereof from one or more committed refinancings or from amounts on deposit in a capital account or finance reserve account or from payment proceeds under a related derivative agreement ("Principal Obligations");

2. obligations incurred by the financing entity to pay specified redemption amounts, other than to the extent that funds are available for payment thereof from one or more refinancings or from amounts on deposit in a capital account or finance reserve account or from payment proceeds under a related derivative agreement ("Redemption Obligations");

3. interest payable under outstanding indebtedness of the financing entity, other than to the extent that funds are available for payment thereof from a finance reserve account, from a funding rebate or from payment proceeds under a related derivative agreement ("Interest Obligations");

4. derivative payments due and payable by the financing entity, determined on a net payment basis after the application of any collateral posted or available for posting by or on behalf of the financing entity to or for the benefit of the applicable counterparty, other than to the extent that funds are available for payment thereof from a capital account or finance reserve account or from a funding rebate ("Hedging Obligations");

5. other funding costs due and payable by the financing entity and that are not included in 2, 3 or 4, above, other than to the extent that funds are available for payment thereof from a finance reserve account or from a funding rebate ("Other Funding Obligations"); and

6. finance entity expenses, due and payable by the financing entity and that are not included in 2 to 5, above and [other than amounts charged by the Financial Services Manager][2], other than to the extent that funds are available for payment thereof from a finance reserve account or from a funding rebate ("Third Party Expense Obligations"),

[1] This assumes that repayments will only include scheduled principal amounts, without regard to default and acceleration.

[2] Confirm arrangements with OPG.

but excluding in each case payments due and payable by the financing entity in respect of any contingent obligation of the financing entity to the extent that such payments would in the aggregate exceed the maximum amount specified therefor in the applicable governing document.

For greater certainty, the Change of Law Protection Agreement will not apply to any other amount or obligation of the financing entity, including (a) any redemption amounts that are or become payable at the option of the financing entity following a Protection Event, (b) amounts required to be deposited by or on behalf of the financing entity into any capital account or finance reserve account, (c) tax liabilities and (d) contingent payment obligations that exceed the maximum amount therefor specified in the applicable governing document.

Adherence Conditions

The Change of Law Protection Agreement will bind the Province in respect of a funding obligation that is an Approved Obligation if:

1. at the time the funding obligation is incurred, the maximum aggregate payment amounts due or becoming due under the funding obligation, together with all other outstanding or committed Approved Obligations, do not exceed the Program Maximum;

2. OPG delivers a certificate, signed by at least two executive officers of OPG and addressed to the Province, not less than [3] Toronto business days prior to the incurrence or any amendment of the funding obligation, setting out the following with respect to the funding obligation:

   (a) the following information respecting a funding obligation to be incurred:

      (i) in the case of an incurrence of any related Principal Obligation, material details respecting such Principal Obligation, including the amount, timing and conditions of repayments, the basis for OPG's expectations regarding the availability of any related refinancings, any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Principal Obligation, and the rating (if any) contemplated to be attributed to the Principal Obligation;

      (ii) in the case of an incurrence of any related Redemption Obligation, material details respecting such Redemption Obligation, including the basis for determining to exercise any right, option or privilege that would result in an obligation to redeem, prepay or pay prior to a scheduled maturity any Approved Obligation, the basis for OPG's expectations regarding the availability of any related refinancings, and any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the Redemption Obligation;

(iii) in the case of an incurrence of any related Interest Obligation, material details respecting such Interest Obligation, including the applicable rate or rates (including default rates) and the timing and any conditions of payments, any required deposits to be made into a finance reserve account or the availability of any funding rebates in order to provide for payment of the Interest Obligation, and the rating (if any) contemplated to be attributed to the Interest Obligation;

(iv) in the case of an incurrence of any related Hedging Obligation, material details respecting such Hedging Obligation, including the counterparty payor(s), the credit ratings (if any) of the payor(s), the anticipated risk or risks to be mitigated by the related derivative agreement, the circumstances in which the Hedging Obligation may not achieve such mitigation or be subject to early termination and whether collateral posting requirements will apply;

(v) in the case of an incurrence of any related Other Funding Obligation and any related Third Party Expense Obligation, material details respecting such obligations, including the payees, the timing and any conditions of payments, and any required deposits to be made into a finance reserve account or the availability of any funding rebates in order to provide for payment of such obligations;

(vi) in the case of any contingent obligation, material details respecting the contingent obligation of the financing entity under the funding obligation, including the nature and extent of any contingent payment, the circumstances in which the payment may arise and the maximum amount specified therefor in the applicable governing document;

(b) if an existing funding obligation is to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the funding obligation, including regarding the applicable details set forth in (a), above, as the context requires;

(c) a statement that:

(i) the Principal Obligations, Redemption Obligations, Interest Obligations and Hedging Obligations becoming payable under the funding obligation (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; and (2) in the opinion of such officers, are reasonably incurred in compliance with the OFHPA, the General Regulation, any other enactments related thereto and the applicable Financing Plan;

(ii) the Other Funding Obligations and Third Party Expense Obligations becoming payable under the funding obligation (1) will, in the opinion of such officers, be reasonably incurred in compliance with the OFHPA, the General

Regulation, any other enactments related thereto and the applicable Financing Plan; (2) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (3) reflect, in all material respects, arm's length terms and conditions;

(iii) any Disclosure Document used in connection with the offering and sale of notes or bonds is "Substantially in the Form" of the Reviewed Documentation; and

(d) confirmation that if the funding obligation includes any contingent obligation, the applicable governing document for the funding obligation sets forth a maximum amount therefor; and

3. the Province has not provided written notice to OPG within 2 Toronto business days of receiving the certificate specified in 2, above, in respect of a proposed funding obligation stating that the Change of Law Protection Agreement shall not apply in respect of the funding obligation.

If the Adherence Conditions are satisfied, it will not be necessary for the Province to specifically approve the particular terms, conditions or documentation related to related funding obligations.

In connection with an incurrence or amendment of a funding obligation, OPG may certify to interested third parties that Adherence Condition 2[3] with respect thereto has been satisfied. Such certification shall be determinative (regardless of any inaccuracies, incompleteness or other defect in the certificate delivered) and may be relied upon by any addressee as conclusive evidence of same.

Reviewed Documentation

OPG will ensure that not less than 20 Toronto business days prior to the initial issuance of any funding obligation by the financing entity, the Province will have received copies, in substantially final form, of the following documents:

(a) the constating and organizational documents of the financing entity;

(b) any management, administration or servicing agreement to which the financing entity is a party, including any replacement or standby services agreement;

(c) the master transfer and servicing agreement between the financing entity and the IESO;

(d) the master trust indenture governing the issuance and common terms of notes or bonds and the security and priority of all Specified Claims that may be incurred from time to time by the financing entity;

[3] Should this only relate to the certification or also the maximum program and the absence of a negating notice?

(e) the form of supplemental indenture (supplemental to the master trust indenture referred to in (d), above) governing the terms and conditions of related series of notes or bonds issued by the financing entity and the particular allocations, security and priority of Specified Claims being serviced by related series property;

(f) the form of any note or bond purchase agreement and any underwriting/agency/selling/subscription agreement with respect to sale of series of notes or bonds to be issued under the supplemental indenture referred to in (e), above;

(g) the form of any credit agreement governing the issuance of short term loan obligations by the financing entity;

(h) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the financing entity from time to time;

(i) the form of any other agreement or instrument under which a Principal Obligation, a Redemption Obligation, an Interest Obligation, a Hedging Obligation or an Other Funding Obligation may arise or be affected. For example, any other agreement under which the financing entity incurs a material financial obligation or that affects the Province's subrogation rights and subrogee interests must be provided to the Province and, if accepted, become part of the Reviewed Documentation in the future, such as standby liquidity arrangements or credit enhancement agreements;

(j) if applicable, any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the financing , including any agreement of the sort contemplated in subsection 29(5) of the OFHPA; and

(k) the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) (a "Disclosure Document") describing the material terms of the Funding Obligation together with any related material information.

If acceptable, the Province will confirm that such reviewed documents shall be the "Reviewed Documentation" for the purposes of Adherence Condition 2(c).

Any proposed changes, additions or supplements to the Reviewed Documentation will be provided to the Province not less than 10 Toronto business days prior to any proposed use or such documents becoming effective. Such modified, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of satisfying Adherence Condition 2(c) if the Province confirms same not less than [2] Toronto business days prior to the delivery and effective time of the certificate contemplated in Adherence Condition 2.

For the purposes of Adherence Condition 2(c), the term "Substantially in the Form" means:

(a) with respect to the Reviewed Documentation referred to in (a) to (j), above, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the Approved Obligations, including regarding the amount of the payment obligations or the timing of

or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or interests as a subrogee as a result of performing the Change of Law Protection Agreement with respect to any Approved Obligation;

(b) with respect to the Reviewed Documentation referred to in (e) to (h), above, and possibly (i) and (j) as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the obligations arising thereunder and as to the timing, conditions and circumstances in which such obligations may arise, but without regard to the specific financial terms, rates, levels and parameters set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation specify specific requirements, limitations or parameters with respect thereto; and

(c) with respect to the Disclosure Document referred to in (k), above, that there are no material differences between the form and substance of the proposed disclosure document and such Disclosure Document and that such proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligation subject to distribution thereunder.

Program Maximum

The Program Maximum will be determined by the Province prior to the initial issuance of the first funding obligation. In determining the Program Maximum, the Province will have regard to (but not bound by) OPG's forecast of the maximum payment obligations expected to arise under Approved Obligations during the next [12] month period, based on and in accordance with the applicable Financing Plan (the "Forecast"). OPG will be required to deliver the Forecast to the Province not less than [20] Toronto business days prior to the proposed incurrence of the first funding obligation. The Province will confirm the Program Maximum in writing to OPG and the financing entity.

The Forecast will be updated and delivered to the Province [quarterly] thereafter, or more frequently if OPG so elects, to reflect the maximum payment obligations expected to arise under Approved Obligations during the [12] month period immediately following such updated Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will determine whether or not the Program Maximum will be revised. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to OPG, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

On-Going Deliveries to the Province

Prior to the initial issuance of any funding obligation by the financing entity, OPG will provide the Province with a copy of the applicable Financing Plan and will promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

Not later than 20 Toronto business days prior to the use or other dissemination by or on behalf of the financing entity of a disclosure document (including any offering circular, prospectus or other investor disclosure statement) respecting a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a copy of such disclosure document.

Not later than 5 Toronto business days prior to the incurrence by the financing entity of a funding obligation that will constitute an Approved Obligation, OPG will provide the Province with a written summary of the final terms and conditions of the proposed funding obligation.

Promptly following any incurrence of a funding obligation that constitutes an Approved Obligation or any amendment of a funding obligation, OPG will be provide the Province with electronic copies of all related governing and all other closing documents executed by or on behalf of the financing entity in connection with such incurrence or amendment that would affect the financing entity's assets or obligations.

Upon request, OPG will provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

For greater certainty, a failure by OPG to make the foregoing deliveries will not constitute a failure to satisfy the Adherence Conditions.

Covenants of OPG

To support the approval and related information processes described above, OPG will covenant to the Province (among other things) as follows:

(a) OPG will comply (including as Financial Services Manager) with the OFHPA, the General Regulation and any other enactment related thereto;

(b) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), OPG will not, without the Province's prior written consent, permit any financing entity to exercise any redemption, pre-payment or early termination right in respect of any Approved Obligation or any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated or otherwise affected;

(c) if a funding obligation that is incurred includes a contingent obligation, OPG will ensure that the governing document for such funding obligation sets forth a maximum amount in order to limit the possible claim amount thereunder and OPG will ensure that such maximum amount is not increased without the Province's prior written consent; and

(d) OPG will ensure that any disclosure (including in any offering document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement will be subject to the prior review and approval of the Province.

For greater certainty, a failure by OPG to perform such covenants will not constitute a failure to satisfy the Adherence Conditions.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mansoori, Nina; Tobias P. Whitfield (MOF) |
| **Cc:** | "LEE John -TREASURY"; "RYFA Ken -TREASURY"; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Emes, Aaron |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Sunday, October 22, 2017 9:43:12 AM |

Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province should one of the events as set out in the term sheet occur. The Province has not determined whether the approach suggested to separate the two documents is appropriate. If it is the proposed long term financing that is planned to be done by year-end and there is a desire to substantially settle the terms of the Protection Agreement by the early November, I don't understand why a draft of the long term financing supplemental indenture would not be available for review yet.

When is it expected that the warehousing facility would be put in place?

Thanks.

Malle

-----Original Message-----

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: October 21, 2017 11:28 PM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-21-17 8:53 AM

To: Mansoori, Nina <nmansoori@torys.com>

Cc: 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA)

<Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

777 Bay Street, 11th Floor

Toronto, ON, M5G 2C8

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina

Sent: Friday, October 20, 2017 10:23 AM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Mansoori, Nina

Sent: October-18-17 9:53 AM

To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA)

<Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-13-17 4:47 PM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)

<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA)
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA)
<Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA)
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -
TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: October 6, 2017 5:58 PM

To: Whitfield, Tobias P. (MOF)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman,

Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence -that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt -the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) -the negative pledge with respect to the exercise of certain options on the debt -the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?

* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>

Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=_weaDdu75HrVpFweHyrRxxM1EQzNPIYkQFeoq253mcA&s=0J5TrxPeKRul4PppMgLYI-FtN-BVYwzRIv5QnGKjERQ&e= >

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=_weaDdu75HrVpFweHyrRxxM1EQzNPIYkQFeoq253mcA&s=GUf5Y7NLBUkb-0b_X6kpwHAMYm-XmviYxNoZK2Mdgfo&e= >

From: Ramchandani, Rima

Sent: September-19-17 9:55 PM

To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Tobias P. Whitfield (MOF) |
| **Cc:** | "LEE John -TREASURY"; "RYFA Ken -TREASURY"; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Emes, Aaron; Mansoori, Nina |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Saturday, October 21, 2017 11:28:36 PM |
| **Attachments:** | Warehouse Supplement - October 17, 2017.doc |

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario  M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-21-17 8:53 AM

To: Mansoori, Nina <nmansoori@torys.com>

Cc: 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

777 Bay Street, 11th Floor

Toronto, ON, M5G 2C8

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina

Sent: Friday, October 20, 2017 10:23 AM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Mansoori, Nina

Sent: October-18-17 9:53 AM

To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-13-17 4:47 PM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: October 6, 2017 5:58 PM

To: Whitfield, Tobias P. (MOF)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?

* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>

Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=qnXkrmNQJ3P_4vafCdSZOCK1rZC9477_GFy1C5Nq7Hw&s=JjzRsSmd-81gOXab0u3DyDyYhIujMCKeYFmoooBxSLM&e= >

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=qnXkrmNQJ3P_4vafCdSZOCK1rZC9477_GFy1C5Nq7Hw&s=hmJUp7h3JSOVUxYL3zQ_BveyKmMn7I22A_hYDztOxD8&e= >

From: Ramchandani, Rima

Sent: September-19-17 9:55 PM

To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>

Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and

the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

# SERIES 2017-1 SUPPLEMENTAL INDENTURE

**between**

**[ISSUER] TRUST**

**by**

**● TRUST COMPANY OF CANADA**
**as Issuer Trustee**

**and**

**● TRUST COMPANY OF CANADA**
**as Indenture Trustee**

**and**

**●**
**as Administrative Agent**

**and**

**CERTAIN CP CONDUIT PURCHASERS,**
**CERTAIN NON-CONDUIT PURCHASERS**
**CERTAIN FUNDING AGENTS**
**and CERTAIN GROUP BANKS**

**Made as of ●, 2017**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 INTERPRETATION ..... 1
1.1 Definitions ..... 1
1.2 Interpretation ..... 1
1.3 Application of this Supplemental Indenture ..... 2

ARTICLE 2 PRINCIPAL TERMS ..... 2
2.1 Creation of Series 2017-1 Senior Notes ..... 2
2.2 Principal Terms ..... 2

ARTICLE 3 NOTE PURCHASE FACILITY ..... 3
3.1 Purchase of Notes by the Purchasers ..... 3
3.2 Delivery ..... 4
3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount ..... 4
3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination ..... 8
3.5 Increases and Reductions of the Commitments, Extension of Scheduled Maturity Date ..... 8
3.6 Interest; Fees and Other Amounts ..... 9
3.7 Repayment of Principal ..... 10
3.8 Indemnification by the Issuer ..... 10
3.9 Funding Agents ..... 11
3.10 Taxes ..... 11
3.11 Increased Costs ..... 12

ARTICLE 4 CONDITIONS PRECEDENT ..... 14
4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes ..... 14
4.2 Conditions Precedent to Each Increase under Series 2017-1 Senior Notes ..... 16

ARTICLE 5 ESTABLISHMENT OF ACCOUNTS ..... 16
5.1 Establishment of Series 2017-1 Cash Reserve Account ..... 16
5.2 Establishment of Series 2017-1 Note Distribution Account **Error! Bookmark not defined.**
5.3 Series Accounts ..... 17
5.4 Waterfall Deposits to Series 2017-1 Cash Reserve Account ..... 17

ARTICLE 6 REPRESENTATIONS AND WARRANTIES ..... 17
6.1 Representations and Warranties of the Issuer ..... 17
6.2 Representations and Warranties of the Purchasers ..... 18
6.3 Survival ..... 18

ARTICLE 7 COVENANTS ..... 18
7.1 Covenants of the Issuer ..... 18

**TABLE OF CONTENTS**
(continued)

**Page**

ARTICLE 8 AGENTS ..... 19
8.1 Administrative Agent ..... 19
8.2 Funding Agents ..... 21

ARTICLE 9 GENERAL ..... 23
9.1 Successor and Assigns ..... 23
9.2 Waiver ..... 26
9.3 Notice ..... 26
9.4 No Waiver: Remedies ..... 27
9.5 Entire Agreement ..... 27
9.6 Governing Law and Attornment ..... 27
9.7 Acknowledgment of Trust Indenture and No Proceedings ..... 27
9.8 Expenses ..... 27
9.9 Further Assurances ..... 28
9.10 Confidentiality ..... 28
9.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions ..... 29
9.12 Limitation of Liability of Issuer Trustee ..... 29
9.13 Execution in Counterparts ..... 30
9.14 Delivery of Executed Copies ..... 30

# FLOATING RATE VARIABLE FUNDING SENIOR NOTES, SERIES 2017-1

**SUPPLEMENTAL INDENTURE** made as of ●, 2017, between ● **Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of ●, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), ● **Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

**WHEREAS** pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

**AND WHEREAS** pursuant to the Trust Indenture, the Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

**AND WHEREAS** the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

**NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

### 1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are

applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

### 1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

## ARTICLE 2
## PRINCIPAL TERMS

### 2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

### 2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer Trustee;

(l) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(m) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(n) will have no minimum issue amount.

## ARTICLE 3
## NOTE PURCHASE FACILITY

### 3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Series 2017-1 Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Series 2017-1 Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Series 2017-1 Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Series 2017-1 Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Series 2017-1 Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Series 2017-1 Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Series 2017-1 Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

### 3.2 Delivery

(a) On the Series 2017-1 Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

### 3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Series 2017-1 Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by telecopy (receipt confirmed), substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Series 2017-1 Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Series 2017-1 Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an

"**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by telecopy (receipt confirmed), substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is equal to (A) $**[1,000,000]** or more, or (B) if less, the excess of the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group over the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by telecopy or electronic messaging system) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide telephonic notice to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Series 2017-1 Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser

elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Series 2017-1 Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Indenture Trustee for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Series 2017-1 Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Indenture Trustee for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Series 2017-1 Closing Date or the Increase Date, as applicable, to the Indenture Trustee for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer

pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date.

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Indenture Trustee shall apply amounts paid to it pursuant to Section 3.3(d) in the following order of priority:

(i) As to an amount equal to the Series 2017-1 Cash Reserve Required Amount, by deposit to the Series 2017-1 Cash Reserve Account; and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

### 3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the"**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by telecopy (receipt confirmed), substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to such Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**"), and (z) whether the Decrease is being funded with the proceeds of a Refinancing (a "**Refinancing Decrease**") or pursuant to the application of collected Clean Energy Adjustments (a "**CEA Decrease**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by this Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by telecopy or electronic messaging system) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

### 3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $**[10,000,000]** or a whole multiple of $**[1,000,000]** in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

**3.6 Interest; Fees and Other Amounts**

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Series 2017-1 Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer no later than two Business Days prior to each Payment Date, setting forth the Monthly Interest, Fees and Other Amounts with respect to its Related Purchaser Group with respect to the preceding Billing Period.

(d) On each Payment Date, the Monthly Interest, Fees and Other Amounts shall be the amount payable in respect of the Series 2017-1 Notes pursuant to Section 7.04(e)(ii)(A) of the Trust Indenture or Section 8.13(b)(A) of the Trust Indenture, as applicable. On each Payment Date the Indenture Trustee shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Monthly Interest, Fees and Other Amounts with respect to the preceding Billing Period.

(e) If on any Payment Date when distributions of collections are being made under Section 7.04(e)(ii)(A) of the Trust Indenture the amount available to pay Monthly Interest, Fees and Other Amounts under such section is less the Monthly Interest, Fees and Other Amounts, an amount equal to the lesser of (x) such deficiency, and (y) the balance on deposit in the Series

2017-1 Cash Reserve Account shall be withdrawn from the Series 2017-1 Cash Reserve Account and applied to the payment of Monthly Interest, Fees and Other Amounts pursuant to Section 3.6(d).

(f) If the amounts deposited to the Series 2017-1 Distribution Account pursuant to Section 3.6(d) and amounts available pursuant to Section 3.6(e) are insufficient to pay all such amounts in full, the amount available shall be applied in the following order of priority:

(i) Firstly, in respect of Monthly Interest and if insufficient funds are available to pay Monthly Interest in full, to all Purchaser Groups, *pro rata* based on the amount of Monthly Interest owing to each Purchaser Group;

(ii) Secondly, in respect of Commitment Fees and if insufficient funds are available to pay Commitment Fees in full to all Purchaser Groups, *pro rata* based on the amount of Commitment Fees owing to each Purchaser Group; and

(iii) Thirdly, in respect of all other amounts owing to the Purchaser Groups and if insufficient funds are available to pay all other amounts owing in full to all Purchaser Groups, *pro rata* based on the amount of the other amounts owing to each Purchaser Group.

### 3.7 Repayment of Principal

(a) On each Payment Date, the Payment Date Waterfall Principal Amount shall be the principal amount payable in respect of the Series 2017-1 Senior Notes pursuant to Section 7.04(e)(iii)(A) of the Trust Indenture or Section 8.13(c)(A) of the Trust Indenture, as applicable. On each Payment Date the Indenture Trustee shall, subject to availability of funds, pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the funds allocated to the Series 2017-1 Senior Notes pursuant to Section 7.04(e)(iii)(A) of the Trust Indenture or Section 8.13(c)(A) of the Trust Indenture, as applicable in repayment of the principal amount of the Series 2017-1 Notes.

(b) If on any Payment Date the amount available to the Purchaser Groups pursuant to Section 7.04(e)(iii)(A) of the Trust Indenture or Section 8.13(c)(A) of the Trust Indenture, as applicable, is less than the Payment Date Waterfall Principal Amount, an amount equal to the lesser of (x) such deficiency, and (y) the balance on deposit in the Series 2017-1 Cash Reserve Account shall be withdrawn from the Series 2017-1 Cash Reserve Account and applied to the repayment of principal amount of the Series 2017-1 Notes.

(c) On each Decrease Date in respect of a Refinancing Decrease Date, the Issuer shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Decrease Amount.

### 3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or

sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

### 3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Monthly Interest and Fees with respect to each Billing Period and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date and the date of any Decrease, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

### 3.10 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**"), excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other taxes based on or measured by the net income of the Purchaser (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**")) as a result of a present or former connection between the recipient and the jurisdiction of the governmental authority imposing such tax (other

than any such connection arising solely from the recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii), any interest, penalties and additions to tax) (all such excluded taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a recipient hereunder, the amounts so payable to the recipient shall be increased, and the recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a recipient, as promptly as possible thereafter the Issuer shall send to such recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("**FATCA**") if the recipient of such payment were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with their obligations under FATCA and to determine that such recipient has complied with it's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a recipient expires or becomes obsolete or inaccurate in any respect, the recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

### 3.11 Increased Costs

(a) (i) If any Regulatory Change (x) subjects any Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank Purchaser or any Program Support Party (an "**Affected Person**") to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected

Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Billing Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by and seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide sixty (60) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii) relating to any period ending, and of which such Affected Party has had knowledge, more than ninety (90) days prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party recompute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

## ARTICLE 4
## CONDITIONS PRECEDENT

### 4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture, the Manager Indemnity and copies of each of the other Program Agreements certified by an Authorized Officer of the Manager;

(ii) evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Manager;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative

Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Provincial Protection and Assurances Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 6.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The Series 2017-1 Cash Reserve Account shall have been established.

(d) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 6.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(e) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(f) An amount equal to the Series 2017-1 Cash Reserve Required Amount shall have been deposited to the Series 2017-1 Cash Reserve Account.

(g) After giving effect to the purchase, the covenant of the Issuer in Section 7.1(d) will be satisfied.

(h) All fees payable on or before the Series 2017-1 Closing Date pursuant to the Fee Letter shall have been paid in full.

(i) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

### 4.2 Conditions Precedent to Each Increase under Series 2017-1 Senior Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed.

(e) after giving effect to the Increase, the covenant of the Issuer in Section 7.1(d) will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

## ARTICLE 5
## ESTABLISHMENT OF ACCOUNTS

### 5.1 Establishment of Series 2017-1 Cash Reserve Account

On or before the Series 2017-1 Closing Date, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Series 2017-1 Cash Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Series 2017-1 Specified Creditors. The Series 2017-1 Cash Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Series 2017-1 Specified Creditors. If, at any time, the institution holding the Series 2017-1 Cash Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Series 2017-1 Cash Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property from such

Series 2017-1 Cash Reserve Account to such new Series 2017-1 Cash Reserve Account. From the date each such new Series 2017-1 Cash Reserve Account is established, it shall be the "Series 2017-1 Cash Reserve Account." The Series 2017-1 Cash Reserve Account is a Finance Reserve Account for the purposes of the Trust Indenture.

### 5.2 Series Account

The Series 2017-1 Cash Reserve Account is established solely for the benefit of the Series 2017-1 Notes and the holders thereof.

### 5.3 Waterfall Deposits to Series 2017-1 Cash Reserve Account

On each Payment Date when distributions of collections are being made under Section 7.04(e) of the Trust Indenture, the Paying Agent shall deposit to the Series 2017-1 Cash Reserve Account an amount equal to the Cash Reserve Required Deposit Amount pursuant to Section 7.04(e)(iv) of the Trust Indenture.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Series 2017-1 Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Series 2017-1 Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(f) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;

(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and

(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.

### 6.2 Representations and Warranties of the Purchasers

Each Purchaser represents and warrants to the Issuer as of the Series 2017-1 Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

### 6.3 Survival

The representations and warranties set out in this Article 4 shall survive the execution hereof.

## ARTICLE 7
## COVENANTS

### 7.1 Covenants of the Issuer

(a) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) as soon as possible, copies of all reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have a material and adverse effect on such party or the transactions contemplated by, or such party's ability to perform its obligations under, this Supplemental Indenture or the other Program Agreements.

(d) The Issuer will, at all time, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than [**49**]% of the aggregate outstanding principal amount of all Issuer Funding Obligations.

(e) The Issuer will not make any amendments to the agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders.

(f) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

## ARTICLE 8
## AGENTS

### 8.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this

Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or telecopy message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to

provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

**8.2 Funding Agents**

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those

expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or telecopy message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall

be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

## ARTICLE 9
## GENERAL

### 9.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below;

(iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 9.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 9.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Group**

**Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Section 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Section 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Section 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may at any time sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may at any time sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental

Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Section 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Section 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Section 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

### 9.2 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

### 9.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group

Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

●

**9.4 No Waiver: Remedies**

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

**9.5 Entire Agreement**

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

**9.6 Governing Law and Attornment**

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

**9.7 Acknowledgment of Trust Indenture and No Proceedings**

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.15 (Limited Recourse) and Section 17.01 (No Petition).

**9.8 Expenses**

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection

with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers; and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

**9.9 Further Assurances**

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

**9.10 Confidentiality**

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any Nonpublic Information (as defined herein) obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 9.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure

has been approved in writing in advance by the Issuer or the Manager; or (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, employees, agents and legal advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) as required by applicable law or compulsory legal process, and (C) as expressly permitted by the terms of the Program Agreements; provided, that, in the case of clause (B), the Issuer will use all reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

### 9.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

### 9.12 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in

connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 9.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 9.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

### 9.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

### 9.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

***[signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Trust Indenture as of the date first above written.

● **TRUST**, by ● **TRUST COMPANY OF CANADA**, as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

●,

By: _____
Name:
Title:

**[NTD: Detailed signing pages to be prepared.]**

## SCHEDULE A

## DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section 8.02 of the Trust Indenture.

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel II**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "International Convergence of Capital Measurements and Capital Standards: a Revised Framework," as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Cash Reserve Required Deposit Amount**" means, on any day, the amount by which the balance on deposit in the Series 2017-1 Cash Reserve Account is less than the Series 2017-1 Cash Reserve Required Amount.

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such

period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**CEA Decrease**" is defined in Section 3.4(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Series 2017-1 Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Series 2017-1 Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 9.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during a Billing Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 9.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 9.1(d).

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Issuer indemnified person**" is defined in Section 3.8

"**Manager Indemnity**" means an indemnity agreement from the Manager in favour of the Purchaser Groups, the Funding Agents and the Administrative Agent with respect to losses resulting from the failure of the Issuer to perform its obligations under the Program Agreements other than losses resulting from insufficient funds being transferred to the Issuer, in form and substance satisfactory to the Purchaser Groups, the Funding Agents and the Administrative Agent.

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" means, with respect to each Billing Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Billing Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Billing Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Billing Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Billing Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-

Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365

"**Monthly Interest, Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Monthly Interest for the related Billing Period for each Purchaser Group; plus (b) the Commitment Fee with respect to the related Billing Period for each Purchaser Group; plus (c) any amounts payable pursuant to a Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 9.8, for each Purchaser Group; plus (d) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Interest, Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(f), an amount equal to the Monthly Interest, Commitment Fees and other amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 9.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) **[10]**% of the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD: The percentage in (a)(x) above is intended to represent the non-deferrable amount.]**

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

**["Other Taxes" means any and all current or future stamp or documentary taxes or other excise or property taxes, charges or similar levies arising from any payment made under this Supplemental Indenture, the Trust Indenture, or any other Program Agreement or from the execution, delivery or enforcement of, or otherwise with respect to, this Supplemental Indenture, the Trust Indenture or any other Program Agreement.]**

"**Payment Date Waterfall Principal Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date in respect of a CEA Decrease before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the CEA Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date in respect of a CEA Decrease before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

**["Privacy Laws" shall mean, collectively (a) *An Act Respecting the Protection of Personal Information in the Private Sector* (Quebec); (b) *Personal Information Protection and Electronic Documents Act* (Canada); (c) *Personal Information Protection Act* (British Columbia); and (d) such other similar statutes of Canada or any province in force from time to time and any principles of common or civil law applicable therein, which restrict, control, regulate or otherwise govern the collection, holding, use or communication of personal information.]**

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Series 2017-1 Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7(c) on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 9.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Refinancing Decrease**" is defined in Section 3.4(a).

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional

body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Cash Reserve Account**" is defined in Section 5.1.

"**Series 2017-1 Cash Reserve Required Amount**" means ●.

"**Series 2017-1 Closing Date**" is defined in Section 3.3(a).

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Variable Funding Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Taxes**" is defined in Section 3.10(a).

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 9.1(c).

"**Transferee**" is defined in Section 9.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

# SCHEDULE B

# [FORM OF NOTE]

# SERIES 2017-1 SENIOR NOTE

●

# SCHEDULE C

# FORM OF INCREASE NOTICE

●

# SCHEDULE D

# FORM OF DECREASE NOTICE

●

# SCHEDULE E

# PURCHASER GROUPS

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Ken Kandeepan |
| **Cc:** | Anna Strathy; Gadi Mayman; Mike Manning |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 20, 2017 2:20:03 PM |

Thanks Ken.
I was wondering about the accounting too. So good to cover that off.
Ron

**From:** Ken Kandeepan
**Sent:** October-20-17 14:19
**To:** Ronald Kwan
**Cc:** Anna Strathy ; Gadi Mayman ; Mike Manning
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Ron
I had a chat with Gadi and subsequently with Jim and Carlos who had some thoughts on this. They will discuss with Mike when he is back on Monday and let Gadi know. In the meantime I will touch based with Cindy to see if there are any potential accounting impacts.
So perhaps we can wait until early next week.
Thanks
Ken k

**From:** Ronald Kwan
**Sent:** Friday, October 20, 2017 1:22 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Gadi,
Not sure if Mike or Ken have talked to you about your query directly or not. I don't have a view on how OPG or those entities might respond to such a request.
If you do want to raise that as a possibility, I could convey that to MOF Legal to provide that comment to OPG's Legal.
Ron

**From:** Gadi Mayman
**Sent:** October-19-17 11:19
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Thanks, Ron. Mike was of the same view. Even more reason for them not to do US$ deals if they can avoid them. I'm wondering if we should ask them, when they're negotiating their ISDA agreements, to put a clause in that would allow those swaps, if they were to be transferred to the Province under the Change of Law Assumption Agreement, to then be governed under the Province's ISDA agreement with that

entity, if one is already in place, rather than us being stuck with one negotiated by OPG?

---

**From:** Ronald Kwan
**Sent:** Thursday, October 19, 2017 10:30 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Gadi,

Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):

> In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.

Ron

---

**From:** Gadi Mayman
**Sent:** October-19-17 09:28
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement

I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)"

<Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>
**Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>;

Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the

review of the working group including the dealers and the rating agencies.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)

**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in

the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima

**Sent:** September-19-17 9:55 PM

**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>

**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims

to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the

new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Ken Kandeepan
**To:** Ronald Kwan
**Cc:** Anna Strathy; Gadi Mayman; Mike Manning
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Friday, October 20, 2017 2:18:55 PM

---

Hi Ron
I had a chat with Gadi and subsequently with Jim and Carlos who had some thoughts on this. They will discuss with Mike when he is back on Monday and let Gadi know. In the meantime I will touch based with Cindy to see if there are any potential accounting impacts.
So perhaps we can wait until early next week.
Thanks
Ken k

---

**From:** Ronald Kwan
**Sent:** Friday, October 20, 2017 1:22 PM
**To:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Gadi,
Not sure if Mike or Ken have talked to you about your query directly or not. I don't have a view on how OPG or those entities might respond to such a request.
If you do want to raise that as a possibility, I could convey that to MOF Legal to provide that comment to OPG's Legal.
Ron

---

**From:** Gadi Mayman
**Sent:** October-19-17 11:19
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Thanks, Ron. Mike was of the same view. Even more reason for them not to do US$ deals if they can avoid them. I'm wondering if we should ask them, when they're negotiating their ISDA agreements, to put a clause in that would allow those swaps, if they were to be transferred to the Province under the Change of Law Assumption Agreement, to then be governed under the Province's ISDA agreement with that entity, if one is already in place, rather than us being stuck with one negotiated by OPG?

---

**From:** Ronald Kwan
**Sent:** Thursday, October 19, 2017 10:30 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
Hi Gadi,

Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):

> In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.

Ron

---

**From:** Gadi Mayman
**Sent:** October-19-17 09:28
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement

I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>
> **Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**

Good Morning Malle,
In terms of Program Agreements, here is an update:
-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
-we'll have a form of ISDA Schedule to you soon.
-we don't expect to have a substantially advanced draft of the OM to share until November.
Please let me know if you have any questions.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of

other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>;

Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points

amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca

Phone: 416-325-1456

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If

you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Cc:** | Anna Strathy |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 20, 2017 1:22:06 PM |

Hi Gadi,
Not sure if Mike or Ken have talked to you about your query directly or not. I don't have a view on how OPG or those entities might respond to such a request.
If you do want to raise that as a possibility, I could convey that to MOF Legal to provide that comment to OPG's Legal.
Ron

**From:** Gadi Mayman
**Sent:** October-19-17 11:19
**To:** Ronald Kwan ; Mike Manning ; Ken Kandeepan
**Cc:** Anna Strathy
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Thanks, Ron. Mike was of the same view. Even more reason for them not to do US$ deals if they can avoid them. I'm wondering if we should ask them, when they're negotiating their ISDA agreements, to put a clause in that would allow those swaps, if they were to be transferred to the Province under the Change of Law Assumption Agreement, to then be governed under the Province's ISDA agreement with that entity, if one is already in place, rather than us being stuck with one negotiated by OPG?

**From:** Ronald Kwan
**Sent:** Thursday, October 19, 2017 10:30 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Gadi,
Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):

> In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.

Ron

**From:** Gadi Mayman
**Sent:** October-19-17 09:28
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement
I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?

Begin forwarded message:

> **From:** "Mansoori, Nina" <nmansoori@torys.com>
> **Date:** October 19, 2017 at 9:17:25 AM EDT
> **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>
> **Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**
>
> Good Morning Malle,
> In terms of Program Agreements, here is an update:
> -we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.
> -we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.
> -I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).
> -we'll have a form of ISDA Schedule to you soon.
> -we don't expect to have a substantially advanced draft of the OM to share until November.
> Please let me know if you have any questions.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,
We will be reviewing your comments and mark-up.
On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?
Thank you.
Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and

permanently delete the message and all attachments. Thank you.

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK

Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding

Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou

confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Mansoori, Nina |
| **To:** | Tobias P. Whitfield (MOF) |
| **Cc:** | "LEE John -TREASURY"; "RYFA Ken -TREASURY"; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; "Cengarle, John (MOF)"; Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; "Veinot, Cindy (TBS)"; Malle Hanslep (MOF); "Thouin, Alena (ENERGY)"; Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Emes, Aaron; Mansoori, Nina |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Friday, October 20, 2017 10:22:55 AM |
| **Attachments:** | Change of Law Procedures Agreement - Fair Hydro.DOCX |

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Mansoori, Nina
**Sent:** October-18-17 9:53 AM
**To:** 'Whitfield, Tobias P. (MOF)'
**Cc:** LEE John -TREASURY ; RYFA Ken -TREASURY ; 'WONG Leslie -LAWDIV' ; Ramchandani, Rima ; Feldman, Michael ; Olusoga, Yinka ; Donaldson, Mark (TBS) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Devine, James (OFA) ; Yep, Carlos (OFA) ; Strathy, Anna (OFA) ; Cengarle, John (MOF) ; Kwan, Ronald (OFA) ; Katona, Keley (MOF) ; He, Gavin (OFA) ; Hirani, Anis (OFA) ; Kim, John (OFA) ; Veinot, Cindy (TBS) ; Hanslep, Malle (MOF) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (MAG) ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LADAK Lubna -TREASURY' ; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review

of the working group including the dealers and the rating agencies.
Best Regards,
Nina
Nina Mansoori

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG);

'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to

bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the

Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous

ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

# CHANGE OF LAW PROCEDURES AGREEMENT

**THIS AGREEMENT** made as of the ■ day of ■, 2017.

**B E T W E E N:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE ACTING TOGETHER**

– and –

**ONTARIO POWER GENERATION INC.**

**RECITALS:**

**WHEREAS** the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017*, S.O. 2017, c. 16, Schedule 1 (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

**AND WHEREAS** under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the regulations thereunder to record certain amounts in such account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

**AND WHEREAS** the IESO may from time to time, in accordance with the Act, Transfer a specified portion of the Regulatory Asset to the Issuer on a fully-serviced basis and such Transfer shall result in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the specified portion of the Regulatory Asset;

**AND WHEREAS** the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

**AND WHEREAS** the Province has agreed in favour of the Indenture Trustee in the Change of Law Protection Agreement to make regularly scheduled payments on certain of the Funding Obligations and related obligations of the Issuer (the "**Specified Claims**") in certain circumstances;

**AND WHEREAS** the parties hereto wish to set out the procedures by which the Province provides its approval to the Manager to certify that an incurrence of Specified Claims by the Issuer from time to time is covered under the Change of Law Protection Agreement;

**NOW THEREFORE** in consideration of one dollar ($1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree, each with the other, as follows:

## ARTICLE 1
## INTERPRETATION

### 1.1 Definitions

(a) In this Agreement, except where the context otherwise requires, the following terms will have the following meanings:

"**Act**" has the meaning given to that term in the recitals.

"**Agreement**" means this Change of Law Procedures Agreement.

"**Business Day**" means every day except a Saturday or Sunday, or a day which is a statutory or civic holiday in the Province of Ontario.

"**Certification**" means the certification by the Manager described in Section ■[1] of the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated ■, 2017 between the Province, as obligor, the Indenture Trustee, and the Issuer.

"**Disclosure Document**" means the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of any Funding Obligations.

"**Forecast**" has the meaning attributed to such term in Section 2.2(a).

"**IESO**" means the Independent Electricity System Operator.

"**Indenture**" has the meaning attributed to such term in Section 2.3(a)(iv).

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of certain specified creditors, or any successor thereto, under the Indenture.

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario.

"**Manager**" means Ontario Power Generation Inc., in its capacity as manager appointed under the management agreement referenced in Section 2.3(a)(ii) to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Person**" means any natural person, partnership, limited partnership, limited liability partnership, joint venture, syndicate, sole proprietorship, company or corporation (with or without share capital), limited liability corporation, unlimited liability company, joint stock company, unincorporated association, trust, trustee, executor, administrator or other legal

[1] This will be the section of the Change of Law Protection Agreement which sets out that a Specified Claim will be covered under the Change of Law Protection Agreement if the Manager delivers a certificate, signed by at least two executive officers of the Manager and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.

personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted and pronouns have a similarly extended meaning.

"**Program Maximum**" means the maximum Canadian dollar amount determined and confirmed in writing in accordance with Section 2.2.

"**Protection Event**" has the meaning attributed to such term in the Change of Law Protection Agreement.

"**Regulatory Asset**" has the meaning attributed to such term in the recitals.

"**Reviewed Documentation**" has the meaning attributed to such term in Section 2.3.

"**Specified Claims**" has the meaning attributed to such term in the recitals.

"**Substantially in the Form**" means:

(i) with respect to the Reviewed Documentation referred to in 2.3(a)(i) to 2.3(a)(xiv), that the covenants of the Issuer are no more onerous in any material respect and there are events of default that are consistent in all material respects, respectively, with the covenants of the Issuer and events of default contained in the Reviewed Documentation; and

(ii) with respect to the Disclosure Document referred to in 2.3(a)(xv), that there are no material differences between the form and substance of the proposed disclosure document and such disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligations subject to distribution thereunder.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Act and the regulations made thereunder or incidental thereto.

**1.2 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and will not affect the construction or interpretation hereof.

**1.3 Interpretation**

In this Agreement, unless the context otherwise requires:

1.3.1 words importing the singular shall include the plural and vice versa, words importing gender shall include all genders or the neuter, and words importing the neuter shall include all genders;

1.3.2 the words "include", "includes", "including", or any variations thereof, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather

as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

1.3.3 references to any Person include such Person's successors and permitted assigns;

1.3.4 except as otherwise provided in this Agreement, any reference in this Agreement to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all rules and regulations made under such statute, in the case of a statute, all amendments made to such statute, regulation, policy, rule or instrument, and any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

1.3.5 any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

1.3.6 in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

**1.4 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement.

**1.6 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.7 Governing Law**

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## ARTICLE 2
## APPROVAL PROCESS

**2.1 Approval Process**

The Manager is authorized to make a Certification in respect of a specific incurrence of Funding Obligations and other Specified Claims upon the following conditions precedent having been satisfied:

(a) at the time such Funding Obligations are to be incurred, the maximum aggregate payment amounts due or becoming due under such Funding Obligations, together with all other outstanding or committed Specified Claims previously subject to a Certification, do not exceed the Program Maximum in effect at that time; and

(b) The Manager delivers a certificate, signed by at least two of its executive officers and addressed to the Province, not less than **[■]** Business Days prior to the incurrence of such Funding Obligations:

(i) setting out the material terms of such Funding Obligations pertaining to principal amount, pricing and third party fees; and

(ii) confirming that:

(A) the Funding Obligations (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the Act and the regulations made thereunder, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and

(B) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation.

**2.2 Program Maximum**

(a) The initial Program Maximum will be determined prior to the initial issuance of Funding Obligations under the Indenture in accordance with this Section 2.2. The Program Maximum will be based on the Manager's forecast of the maximum payment obligations expected to arise under Specified Claims during the next 24 month period, based on and in accordance with the applicable Financing Plan (the "**Forecast**"). The Manager will be required to deliver the Forecast to the Province

not less than **[thirty (30)]** Business Days prior to the proposed incurrence of the initial Funding Obligations under the Indenture. If the Province agrees that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods, then the Province will confirm in writing to the Manager within **[thirty (30)]** Business Days of receipt of the Forecast that it agrees with the Program Maximum.

(b) The Forecast will be updated and delivered to the Province between nine (9) and twelve (12) months prior to the expiry of the then current Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will confirm that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods.

(c) If the Province does not agree with the determination of the Program Maximum, then the Province and the Manager will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and the Program Maximum will be revised within **[thirty (30)]** Business Days of receipt of the Forecast. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to the Manager, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

**2.3 Reviewed Documentation**

(a) The Manager will ensure that not less than **[■]** Business Days prior to the initial issuance of any Funding Obligations under the Indenture, the Province will have received copies, in substantially final form, of the following documents:

(i) the declaration of trust made as of ■, 2017 under which the Issuer was established;

(ii) the management agreement dated ■, 2017 between the Manager and the Issuer;

(iii) the master transfer and servicing agreement dated ■, 2017 between the Issuer, the IESO and the Indenture Trustee;

(iv) the master trust indenture dated ■, 2017 between the Issuer and the Indenture Trustee (the "**Indenture**");

(v) the Senior Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-1 Notes;

(vi) the Subordinated Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-1 Notes;

(vii) the Senior Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-2 Notes;

(viii) the Subordinated Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-2 Notes;

(ix) the Agency Agreement dated ■, 2017 between ■;

(x) the Subscription Agreement dated ■, 2017 between ■;

(xi) the schedule to an ISDA Master Agreement dated ■, 2017 governing derivative transactions that may be entered into by the Issuer from time to time;

(xii) if applicable, any other agreement or instrument under which a Funding Obligation may arise or be affected;

(xiii) if applicable, any other agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act;

(xiv) the security agreement dated ■, 2017 granted by the IESO to the Issuer; and

(xv) the Preliminary and Final Offering Memorandums of the Issuer together with any related material information.

(b) The Province will confirm within **[■]** Business Days of receipt of the documents referenced in Section 2.3(a) if such reviewed documents shall be the "Reviewed Documentation" for the purposes of this Agreement; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement.

(c) Any proposed material amendments, additions or supplements to the Reviewed Documentation will be provided to the Province not less than **[fifteen (15)]** Business Days prior to any proposed use or such documents becoming effective. Such material amendments, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of this Agreement if the Province confirms the same within **[fifteen (15)]** Business Days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.

**2.4 Termination**

This Agreement will continue in full force and effect so long as any Specified Claims remain outstanding and until the Issuer has satisfied all of its obligations under the Reviewed Documentation.

## ARTICLE 3
## COVENANTS OF MANAGER

### 3.1 Reporting

Promptly after the issuance of any Funding Obligations by the Issuer (or an amendment or replacement thereof) from time to time, the Manager will provide the Province with:

(a) a copy of the then most recent Financing Plan;

(b) electronic copies of all related closing documents executed by or on behalf of the Issuer in connection with such incurrence, amendment or replacement of such Funding Obligations that would affect the Issuer's assets or obligations (including, for greater certainty, any Disclosure Documents); and

(c) all additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 3.2 Other Covenants

(a) The Manager will comply and ensure compliance by the Issuer with the Act and the regulations made thereunder and any other enactment related thereto;

(b) After the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), the Manager will not, without the Province's prior written consent, permit any Issuer to exercise any redemption, pre-payment, early termination right in respect of any Specified Claim or exercise any other election or privilege in respect of any Specified Claim, in each case, if as a result the obligations applicable to the Specified Claim under the Change of Law Protection Agreement would be accelerated; and

(c) The Manager will ensure that any disclosure (including in any Disclosure Document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement and this Agreement will be subject to the prior review and approval of the Province unless that disclosure is substantially in a form previously approved by the Province.

### 3.3 Validity

For greater certainty, a failure by the Manager to perform the covenants in this Article 3 will not affect the validity of a Certification made under the Change of Law Protection Agreement in accordance with requirements of Section 2.1 of this Agreement.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES

### 4.1 Province

The Province hereby represents and warrants to the Manager that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice or lapse of time or both) a breach of or default under any agreement to which the Province is a party or by which it is bound;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is or, if applicable, will then be a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(ii) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments; and

(iii) statutory limitations of general application respecting the enforceability of claims against the Province or its property.

**4.2 The Manager**

The Manager hereby represents and warrants to the Province that:

(a) the Manager has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Manager of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice

or lapse of time or both) a breach of or default under any agreement to which the Manager is a party or by which it is bound;

(c) all necessary action has been taken by the Manager to authorize the execution and delivery of this Agreement by the Manager and the performance by the Manager of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Manager and is or, if applicable, will then be a legal, valid and binding obligation of the Manager, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(ii) general equitable principles.

## ARTICLE 5
## GENERAL PROVISIONS

### 5.1 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 5.1 shall be null and void.

### 5.2 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 5.3 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the

time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this section. Notices and other communications will be addressed as follows:

(a) if to the Province:

Ministry of Finance
7 Queen's Park Crescent, 7th Floor
Toronto, Ontario M7A 1Y7

Attention: Minister of Finance
Facsimile: (416) 325-0374

and

Ministry of Energy
5th Floor
56 Wellesley Street West
Toronto, Ontario M7A 2E7

Attention: Legal Director
Facsimile: (416) 325-1781

(b) if to the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: ■
Facsimile: ■

or to such other addresses as a party may from time to time notify the others in accordance with this Section 5.3.

**5.4 Further Assurances**

Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

**5.5 Counterparts; Electronic Delivery**

This Agreement may be signed in counterparts and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by either party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the day and year first above written.

**ONTARIO POWER GENERATION INC., in its capacity as Manager**

By: _____
Name:
Title:

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Subject:** | RE: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Wednesday, October 25, 2017 3:00:05 PM |

I'll set up a meeting to discuss. Invite to follow.

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Tuesday, October 24, 2017 1:00 PM
**To:** Gadi Mayman ; Ken Kandeepan ; Malle Hanslep (MOF) ; Veinot, Cindy (TBS) ; Anna Strathy ; Mike Manning ; Ronald Kwan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Cengarle, John (MOF) ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Usman Zahid ; Anis Hirani ; John Kim ; Tom McKinlay (MAG) ; Thouin, Alena (ENERGY) ; 'stephen.ashbourne@blakes.com' ; Hresa Gavaris ; John Psinas
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Further to OPG's response to our proposals, please find attached a discussion document drafted by our outside legal counsel Stephen Ashbourne and based on discussions amongst our Provincial legal teams.

This document sets out a number of questions that we need to consider and answer in order to respond to OPG with the Province's position.

A meeting amongst this group would be useful to discuss these issues and to inform a response to OPG.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the

approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.
Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna - TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.
We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.
We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.
Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He,

Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna - TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting

required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

TORYS LLP

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Sarah Harris; Malle Hanslep (MOF) |
| **Cc:** | Opal Kandelas; Mike Manning; Dean Hwang |
| **Subject:** | RE: Fair Hydro -- Form of ISDA Schedule |
| **Date:** | Wednesday, October 25, 2017 2:38:45 PM |
| **Attachments:** | Fair Hydro – Form of ISDA Schedule.docx |

---

Sarah – please see attached.
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Sarah Harris [mailto:Sarah.Harris@ofina.on.ca]
**Sent:** October 25, 2017 2:32 PM
**To:** Hanslep, Malle (MOF)
**Cc:** Whitfield, Tobias P. (MOF); Kandelas, Opal (OFA); Manning, Mike (OFA); Dean Hwang
**Subject:** FW: Fair Hydro -- Form of ISDA Schedule
Hi Malle,
When you're available to discuss, please let me know. If it is possible for you to share the draft schedule in advance, that would be helpful.
Thanks,
Sarah

---

**From:** Mike Manning
**Sent:** Tuesday, October 24, 2017 6:49 PM
**To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
**Subject:** Re: Fair Hydro -- Form of ISDA Schedule
I think that is a good idea. We may need all hands on deck.
Thanks, Mike

Sent from my iPhone

On Oct 24, 2017, at 5:36 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Mike
>
> Although we are not really going to give much input to the terms of the, various agreements etc I am wondering whether it makes sense to have the documentation group involved in this project. I know that Opal came to one of the early meetings as there are going to be quite a few agreements to review.
>
> Perhaps we can discuss this tomorrow?
>
> Thanks
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Mansoori, Nina <nmansoori@torys.com>
> Sent: Tuesday, October 24, 2017 17:21
> To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com

Cc: Feldman, Michael; Ramchandani, Rima; Olusoga, Yinka; Saulnier, Brett; Mansoori, Nina
Subject: RE: Fair Hydro -- Form of ISDA Schedule

All,

We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada |
www.torys.com[torys.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them,

and destroy all copies. Thank you.

# ISDA®

International Swaps Dealers Association, Inc.

# SCHEDULE
# to the
# 1992 Master Agreement

dated as of **[■]**, 2017

between

**[HEDGE PROVIDER]**
("**Party A**"),

and

**[ISSUER]**
**("Party B")**

Part 1 **Termination Provisions.**

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of:

Section 5(a)(v), Not Applicable

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v), Not Applicable,

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

(b) ***"Specified Transaction"*** will have the meaning specified in Section 14 of the Agreement.

(c) The ***"Breach of Agreement"*** provision of Section 5(a)(ii) will apply to Party A and will not apply to Party B.

(d) The ***"Credit Support Default"*** provisions of Section 5(a)(iii) will apply to Party A and will not apply to Party B.

(e) The ***"Misrepresentation"*** provisions of Section 5(a)(iv) will apply to Party A and will not apply to Party B.

(f) The ***"Default under Specified Transaction"*** provisions of Section 5(a)(v) will **[not]** apply to Party A and will not apply to Party B.

(g) The ***"Cross-Default"*** provisions of Section 5(a)(vi) will not apply to Party A and will not apply to Party B.

(h) The ***"Credit Event Upon Merger"*** provisions of Section 5(b)(iv) will not apply to Party A and will not apply to Party B.

(i) The ***"Automatic Early Termination"*** provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(j) ***Payments on Early Termination***. For the purpose of Section 6(e) of this Agreement:

(i) Market Quotation will apply.

(ii) The Second Method will apply.

(k) ***Payments on Early Termination Due to Certain Events***. Notwithstanding Section 6, if Party A is (A) the Affected Party for an Additional Termination Event or a Tax Event Upon Merger, or (B) the Defaulting Party for an Event of Default, paragraphs (i) to (v) below apply:

(i) The definition of ***"Market Quotation"*** is deleted and replaced with the following:

***"Market Quotation"*** means, for one or more Terminated Transactions, a Firm Offer which is:

(1) made by a Reference Market-maker that is an Eligible Replacement;

(2) for an amount that would be paid to Party B (expressed as a negative number) or by Party B (expressed as a positive number) in consideration of an agreement between Party B and the Reference Market-maker to enter into a Replacement Transaction; and

(3) made on the basis that Unpaid Amounts for the Terminated Transaction or group of Transactions are to be excluded but any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of any conditions precedent) after that Early Termination Date is to be included.

(ii) In determining whether or not a Firm Offer satisfies the condition in sub-paragraph (ii)(B) of the definition of "Replacement Transaction", Party B will act in a commercially reasonable manner.

(iii) The definition of ***"Settlement Amount"*** is deleted and replaced with the following:

***"Settlement Amount"*** means, for any Early Termination Date:

(a) if, on or prior to the Early Termination Date, a Market Quotation for a Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally

binding, the Termination Currency Equivalent of the amount (whether positive or negative) of the Market Quotation;

(b) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions has been accepted by Party B and is legally binding and one or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, the Termination Currency Equivalent of the amount (whether positive or negative) of the lowest of the Market Quotations (for the avoidance of doubt, (i) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number and (ii) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value); or

(c) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally binding and no Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B's Loss (whether positive or negative and without reference to any Unpaid amounts) for the relevant Terminated Transaction or group of Terminated Transactions.

(iv) At any time on or before the Early Termination Date at which two or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B must accept the lowest of the Market Quotations. For this purpose, (A) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number, and (B) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value.

(v) If Party B requests Party A in writing to obtain Market Quotations, Party A will use reasonable efforts to do so before the Early Termination Date.

(vi) For the purpose of determining Unpaid Amounts, any payment or delivery obligation which was (or would have been but for Section 2(a)(iii)) required to be performed pursuant to paragraph 2 of the Credit Support Annex shall be disregarded.

(l) ***"Termination Currency"*** shall mean Canadian dollars.

(m) ***Bankruptcy***

(i) Section 5(a)(vii)(2), (7) and (9) does not apply to Party B.

(ii) Section 5(a)(vii)(3) does not apply to Party B for any assignment, arrangement or composition effected by or under the Indenture Documents.

(iii) Section 5(a)(vii)(4) does not apply to Party B for a proceeding or petition instituted or presented by Party A or any of its Affiliates.

(iv) Section 5(a)(vii)(6) does not apply to Party B for (i) an appointment that is made under the Indenture Documents, or (ii) an appointment to which Party B is not subject.

(v) Section 5(a)(vii)(8) applies to Party B only if it applies to Section 5(a)(vii)(1), (3), (4), (5) and (6), as amended.

(n) ***Tax Event and Tax Event Upon Merger***

Section 5(b)(ii) applies but the words "(x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y)" are hereby deleted.

Section 5(b)(iii) applies but Party A will not be entitled to designate an Early Termination Date by reason of a Tax Event Upon Merger if it is the Affected Party.

Section 6(b)(ii) applies but the words "or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party" are deleted.

(o) ***Additional Termination Event*** will apply. The following shall constitute an Additional Termination Event:

(i) It shall be an Additional Termination Event and Party B shall be the sole Affected Party and all Transactions then outstanding shall be Affected Transactions if Party B fails to comply with the requirements of Part 5(o).

(ii) It shall be an Additional Termination Event and Party A shall be the sole Affected Party and all Transactions then outstanding shall be the Affected Transactions if Party A fails to comply with the requirements of Part 5(h).

(iii) It shall be an Additional Termination Event and Party B shall be the sole Affected Party upon an acceleration of the Series [■] Notes under Section **[8.02]** of the Trust Indenture.

(iv) **[NTD: consider including a partial termination provision to facilitate right-sizing interest rate hedges following any unscheduled reductions of the underlying financed amounts]**

Part 2 **Tax Representations. [NTD: subject to Tax review]**

(a) ***Payer Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B will make the following representations.

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

(i) Party A and Party B each make the following representation:

It is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada).*

(c) ***Other representations:*** None made.

Part 3 **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** |
|---|---|---|
| Each Party | Any document required or reasonably requested to allow the other party to make payments under the Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate. | Promptly upon reasonable demand by either party. |

(b) Other documents to be delivered are:

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** | **Covered by Section 3(d) Representation** |
|---|---|---|---|
| Each Party | Evidence satisfactory in form and substance to the other party of (i) the authority of the signatory of the party to execute this Agreement **[and Credit Support Annex]** and any Confirmation and (ii) list of the names, true signatures of the signatory of this Agreement or any Confirmation. | Upon execution of this Agreement | Yes |
| Party A | A copy of unaudited financial statements for the most recently ended fiscal year. | As soon as reasonably practicable following a request by Party B to the extent not publically available online | No |
| Each Party | Legal opinion satisfactory to the other Party. | Upon execution of this Agreement | Yes |
| Party B | ISDA Cross-Border Swaps Representation Letter | If requested by Party A, upon execution and delivery of this Agreement. | No. |
| Party A and B | ISDA Canadian Representation Letter #1 | Upon execution and delivery of this Agreement. | No. |

Part 4 **Miscellaneous.**

(a) ***Addresses for Notices.*** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A: **[NTD: ■]**

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
Electronic Messaging System Details: ■
(Only with respect to transactions through this Office)

For any notices with respect to Section 5 and 6 of this Agreement for Party A:

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
E-mail: ■

Address for notices or communications to Party B:

[ISSUER]
c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario, M5J 2Y1

Attn: [■]
Fax: [■]
Email: [■]

with copies to:

[ISSUER TRUSTEE], in its capacity as Issuer Trustee for [ISSUER]

Attn: [■]
Fax: [■]
Email: [■]

Notwithstanding Section 12(a) of this Agreement, service of legal process documents relating to this Agreement may not be delivered by facsimile or by electronic messaging system.

(b) ***Process Agent***. For the purpose of Section 13(c) of this Agreement, neither party appoints a Process Agent.

(c) ***Offices***. The provisions of Section 10(a) will apply to this Agreement.

(d) ***Multibranch Party***. For the purpose of Section 10(c) of this Agreement:

Party A **[is][is not]** a Multibranch Party and may only enter into a Transaction through any of the following Offices:

Party B is not a Multibranch Party.

(e) ***Calculation Agent***. The Calculation Agent is Party A unless (i) otherwise specified in a Confirmation in relation to the relevant Transaction or (ii) a replacement Calculation Agent is designated by Party B as set

forth below. All calculations by the Calculation Agent shall be made in good faith and through the exercise of its commercially reasonable judgment. The calculations and determinations of the Calculation Agent shall (except in the case of manifest error) be final and binding upon all parties. Upon the failure of Party A to perform its obligations as Calculation Agent hereunder within five Local Business Days of Party A receiving from Party B notice of such failure, the sole remedy of Party B will be the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent. For so long as an Event of Default in respect of Party A is continuing, Party B will have the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent, without prejudice to any other remedy to which Party B is otherwise entitled under this Agreement. Upon Party A demonstrating its ability to resume performance of its obligations as Calculation Agent or such Event of Default no longer continuing, Party A may elect to resume its role as Calculation Agent.

(f) ***Credit Support Document***. Details of any Credit Support Document:

In relation to Party A: any Eligible Guarantee,

In relation to Party B: not applicable.

(g) ***Credit Support Provider***. Credit Support Provider means in relation to Party A, any Eligible Guarantor, and in relation to Party B; not applicable.

(h) ***Governing Law***. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to choice of law doctrine).

(i) ***Jurisdiction***. Section 13(b)(i) is hereby deleted and replaced by the following Section 13(b)(i):
"(i) submits to the exclusive jurisdiction of the Province of Ontario."

(j) ***Netting of Payments***. Subparagraph (ii) of Section 2(c) of this Agreement will not apply.

(k) ***"Affiliate"*** will have the meaning specified in Section 14 of this Agreement.

(l) ***Characterization under Program Agreements.*** The parties acknowledging and agree that:

(i) The Master Agreement and this Schedule constitute a "Derivative Agreement" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(ii) Party B is a "Derivative Counterparty" as used and defined under the Indenture Documents and a "derivative agreement" as defined under the Act.

(iii) Any payments required in connection with the Master Agreement and this Schedule will be "derivative payments" as defined under the Act.

Part 5 **Other Provisions.**

(a) ***Definitions***. Reference is hereby made to the 2006 ISDA Definitions (the "2006 Definitions") as published by the International Swaps and Derivatives Association, Inc. ("ISDA") or to any subsequent update being the then current version of the 2006 Definitions. Any terms used and not otherwise defined herein which are contained in the Definitions shall have the meaning set forth therein, and if not contained in the Definitions, will have the meanings specified in the Supplemental Indenture, either directly or by reference. If there is any inconsistency between this Agreement and the Definitions, this Agreement will govern. If there is inconsistency between a Confirmation and this Agreement or the Definitions, the Confirmation will govern.

For the purpose of this Agreement:

***"Act"*** means the *Ontario Fair Hydro Plan Act, 2017* together with any Regulations in effect thereunder from time to time.

***"DBRS"*** means DBRS Limited and its successors.

***"Eligible Guarantee"*** means an unconditional and irrevocable guarantee by a guarantor that is a principal debtor rather than surety and is directly enforceable by Party B, where either (i) a law firm has given a legal opinion confirming that none of the guarantor's payments to Party B under the guarantee will be subject to deduction or withholding for Tax, (ii) the guarantee provides that, if the guarantor's payments to Party B are subject to deduction or withholding for Tax, the guarantor is required to pay the additional amount necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required, or (iii) if any payment under the guarantee is made net of deduction or withholding for Tax, Party A is required under Section 2(a)(i) to make an additional payment necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required.

***"Eligible Replacement"*** means an entity (i)(A) having the Ratings Event I Required Ratings, or (B) whose obligations owing to Party B under this Agreement (or its replacement, as applicable) are guaranteed under an Eligible Guarantee by a guarantor having the Ratings Event I Required Ratings, and (ii) reasonably acceptable to Party B.

***"Firm Offer"*** means an offer which, when made, was capable of becoming legally binding upon acceptance.

***"Indenture Documents"*** means the Supplemental Indenture together with the Trust Indenture.

***"Local Business Day"*** means a day other than a Saturday, a Sunday or a day banking institutions or trust companies in Toronto, Ontario or Montreal, Quebec are authorized or obligated by law to close, and the definition of ***"Local Business Day"*** in Section 14 is deleted.

***"Moody's"*** means Moody's Investors Service, Inc. and its successors.

***"Relevant Entity"*** means Party A, a guarantor under an Eligible Guarantee or an Eligible Replacement, as applicable.

***"Replacement Transaction"*** means, for any Terminated Transaction, a transaction that (i) has terms which would be effective to transfer to a transferee all of Party A's rights and obligations under this Agreement, which terms are identical to the terms of this Agreement, other than party names, the effective date of the transfer, tax representations and any representations about the status of the substitute counterparty, notice information and account details, or (ii) (A) would preserve for Party B the economic equivalent of any payment or delivery under this Agreement for the Terminated Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date, and (B) has terms which are, in all material respects, no less beneficial for Party B than those of this Agreement, as determined by Party B.

"***Supplemental Indenture***" means the Supplemental Indenture dated as of [■], among Party B as issuer of Series [■] Notes, **[INDENTURE TRUSTEE]**, as Indenture Trustee, and **[List any other parties]**, which supplements the Trust Indenture.

"***Trust Indenture***" means the Trust Indenture dated as of [■], 2017, between Party B, as issuer, and [INDENTURE TRUSTEE], as Indenture Trustee.

(b) ***Equivalency Clause***. For purposes of disclosure pursuant to the Interest Act (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement, which is to be calculated on any basis other than a full calendar year, is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the number of days in the calendar year in which the period for which interest at such rate is payable ends and the denominator of which is the number of days comprising such other basis.

(c) ***English Language***. The parties hereto have requested that this Agreement and the Schedule be drafted in the English language and that all present and future Confirmations be drafted in the English language. Les parties aux présentes ont requis que cette convention et l'Annexe ainsi que toutes les présentes et futures confirmations soient rédigées en langue anglaise.

(d) ***Eligible Financial Contract***. Each Party, with respect to itself, hereby represents and warrants to the other Party, continuing throughout the term of this agreement, that it is its intention that this Contract and each Transaction hereunder shall constitute an "eligible financial contract" within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any other applicable Canadian insolvency legislation.

(e) ***Telephone Recording***. Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

(f) ***No Reliance***. In connection with the negotiation of, the entering into, and the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction hereunder, each party acknowledges and agrees that: (i) each party is acting for its own account and is not acting as a fiduciary for, or a financial or investment advisor to the other party (or in any similar capacity); (ii) each party is not relying upon any communications (whether written or oral) from the other party as investment advice or as a recommendation to enter into this Agreement, any Credit Support Document to which it is a party and each Transaction hereunder (other than the representations expressly set forth in this Agreement), it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (iii) neither party has received from the other party any assurance or guarantee as to the expected results of any Transaction; and (iv) each party has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own independent investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party.

(g) ***Severability***. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(h) ***Credit Rating Downgrade of Party A***

**(1) Ratings Event I:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from DBRS is not at least, respectively "A" or R-1 (low) or better; or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A2 or P-1 or better (such rating thresholds collectively designated as the **"Ratings Event I Required Rating"** and such failure the **"Ratings Event I Trigger"**, Party A shall at its own expense and not later than 30 Local Business Days following the occurrence of the Ratings Event I (so long as the Ratings Event I is continuing):

(X) transfer acceptable Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(1) of the ISDA Credit Support Annex; or

(Y) either obtain an Eligible Guarantee or transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Z) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency.

**(2) Ratings Event II:**

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case of a Relevant Entity from DBRS is not at least, respectively BBB or R-2 (middle) or better, or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A3 or P-3 or better (such rating thresholds collectively designated as the **"Ratings Event II Required Rating"** and such failure the **"Ratings Event II Trigger"**, Party A shall at its own expense following the occurrence of a Ratings Event II (so long as such Ratings Event II is continuing):

(X) transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) or another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Y) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency, or

(Z) provide Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(2) of the ISDA Credit Support Annex in an amount as required thereunder until (i) such time as the action set out in this sub-paragraph (2)(X) or (2)(Y) above has been taken, or (ii) the Relevant Entity meets the Ratings Event I Required Rating.

(i) ***Successors***. This Agreement and all obligations of the parties hereunder shall be binding upon than respective successors and assigns and shall, together with the rights and remedies, inure to their benefit.

(j) ***Scope of Agreement***. The parties acknowledge and agree that this Agreement will only apply to Transactions entered into in respect of the Series 2016-1 Notes.

(k) ***Counterparts***. This Schedule may be executed in one or more counterparts, either in original or facsimile or pdf form, each of which shall constitute one and the same document and form part of the Agreement. If an executed copy of this Schedule is transmitted by the parties through transmission by facsimile or e-mail in pdf format, this Schedule shall constitute the original document between the parties and the parties hereby adopt the signatures printed by the receiving facsimile machine or computer as the original signatures of the parties.

(l) ***Transfer***. Exception to the Transfer provisions of Section 7 is that consent to transfer shall not be unreasonably withheld as long as the transferee, designated by Party A, is an Eligible Replacement or otherwise satisfies the Rating Agency Condition in respect of the related Rating Agency. In addition, Party A agrees that it will use reasonable commercial efforts to novate each outstanding Transaction hereunder to an Eligible Replacement if it is requested to do so in connection with an assignment of its interests in the Series [■] Notes pursuant to the Indenture Documents.

(m) **[*Foreign Account Tax Compliance Act*.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance

of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement."] **[NTD: subject to Tax review]**

(n) ***Set-off***. Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement and each Confirmation will be made without set-off or counterclaims.

(o) ***Amendments.*** Party B hereby agrees that it will not amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Related Program Agreements if any such amendment, supplementation, modification, restatement or replacement or waiver or consent is material, except with the prior written consent of Party A and satisfaction of the Rating Agency Condition in respect of each Related Rating Agency. Each Related Rating Agency shall be notified by or on behalf of Party B of any nonmaterial amendments, waivers and consents as soon as possible after such non-material amendments, waivers and consents become effective. Any such proposed change to a Related Program Agreement will be subject to Section [13.19] of the Trust Indenture.

(p) ***Limited Recourse:***

(i) Party A is a Specified Creditor (as defined in the Trust Indenture) and its entitlements under this Agreement are subject to the provisions applicable to Specified Creditors under the Trust Indenture. The right of Party A to payments under this Agreement, or the exercise of rights or remedies against Party B under this Agreement is subject to Sections [8.15] (*Limited Recourse*) and [17.01] (*No Petition*) of the Trust Indenture.

(ii) Part 5(p)(i) survives the termination of this Agreement.

(q) ***Non-Petition***. Party A hereby covenants and agrees that it will not at any time institute or encourage against Party B, or join or acquiesce in any institution against Party B of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency, winding-up or similar law for one year and a day after the latest maturing Note (as defined in the Indenture) in connection with any obligations relating to this Agreement or any of the other Related Program Agreements.

(r) ***Party B Pledge***. Notwithstanding Section 7, Party A acknowledges that Party B has or will pledge its rights under this Agreement to the Indenture Trustee for the benefit of the related Specified Creditors under the Indenture Documents and agrees to the pledge. The Indenture Trustee will not be deemed to be a party to this Agreement. However, the Indenture Trustee, acting on behalf of the related Specified Creditors, has the right to enforce this Agreement against Party A. Party A will be entitled to rely on any notice or communication from the Indenture Trustee to that effect.

## Part 6. FX Transaction and Currency Option Transaction Provisions

(a) ***FX Definitions***

(i) Incorporated Into Agreement. The 1998 ISDA FX and Currency Option Transaction Definitions, as published by the International Swaps and Derivatives Association, Inc., (the "FX Definitions") are incorporated by reference into this Agreement. Any terms used and not otherwise defined in this Agreement that are contained in the FX Definitions shall have the respective meanings specified therein (without regard to any amendments thereto after the date of this Agreement).

(ii) Inconsistency. In the event of any inconsistency between the FX Definitions and any other provisions or definitions that are incorporated by reference into this Agreement, the FX Definitions shall prevail with respect to an FX Transaction or a Currency Option Transaction. In the event of any inconsistency between the FX Definitions and the provisions otherwise

contained in this Agreement, those provisions otherwise contained in this Agreement shall prevail.

(b) ***Confirmations.*** Any FX Transaction or Currency Option Transaction into which the parties may before the date of this Agreement have entered, or may in the future enter, where the relevant Confirmation on its face does not expressly exclude the application of this Agreement, shall (to the extent not otherwise provided for in this Agreement) be subject to, governed by and construed in accordance with this Agreement (in substitution for any existing terms, if any, whether express or implied). Each such FX Transaction and Currency Option Transaction shall be a Transaction, and the documents and other confirming evidence (including electronic messages on an electronic messaging service) exchanged between the parties confirming such FX Transaction or Currency Option Transaction shall each be a Confirmation (even where not so specified therein), for the purposes of this Agreement.

(c) ***Payment Instructions.*** All payments to be made in respect of FX Transactions and Currency Option Transactions shall be made in accordance with standing payment instructions provided by the parties (or as otherwise specified in a Confirmation). Any such instructions from a party must be received no later than one Business Day prior to the Value Date or Premium Payment Date (as the case may be) for such Transaction and otherwise be in conformity with standard inter-dealer market practice regarding foreign currency delivery.

(d) ***FX Transaction Novation Netting.***

(i) Automatic Novation Netting. In addition to the settlement netting provisions of Section 2(c) of this Agreement, unless otherwise agreed, if the parties enter into an FX Transaction that is governed by this Agreement through a pair of Novation Netting Offices giving rise to an obligation of a party under this Agreement to pay an amount of currency (a "Currency Obligation") on the same date and in the same currency as a then existing Currency Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such FX Transaction, each such Currency Obligation shall automatically and without further action be cancelled and simultaneously replaced by a new Currency Obligation for such date determined as follows: the amount of such currency that would otherwise have been payable by each party on such date shall be aggregated and the party with the larger aggregate amount shall have a new Currency Obligation to pay to the other party the amount of such currency by which its aggregate amount exceeds the other party's aggregate amount, provided that if the aggregate amounts are equal, no new Currency Obligation shall arise. This paragraph (d) shall not affect any other Currency Obligation of a party to pay any different currency on the same date. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such novation, or (ii) may fail to make changes in any of its books as a result of any such novation.

(ii) "Novation Netting Office" means, as to either party, the office or offices specified in Part 4, Section A in the Schedule and any other office specified from time to time by one party and agreed to in writing by the other party.

(e) ***Currency Option Transaction Discharge and Termination***

(i) Automatic Discharge and Termination of Offsetting Options. Unless otherwise agreed, any Call Option or any Put Option written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option or a Put Option, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of

the last Premium payable in respect of such Currency Option Transactions; provided that such termination and discharge may only occur in respect of Currency Option Transactions:

(1) each being with respect to the same Put Currency and the same Call Currency;
(2) each having the same Expiration Date and Expiration Time;
(3) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
(4) each having the same Strike Price;
(5) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e. where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction which is partially discharged and terminated shall continue to be a Currency Option Transaction for all purposes of this Agreement. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such discharge and termination, or (ii) may fail to make changes in any of its books as a result of any such discharge and termination.

(ii) ***Additional Definitions***

(1) "Call Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to purchase from the Seller at the Strike Price a specified quantity of the Call Currency.

(2) "Put Option" means a Currency Option Transaction entitling, but not obligating, the Buyer to sell to the Seller at the Strike Price a specified quantity of the Put Currency.

*- signature page follows -*

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

| **[HEDGE PROVIDER]** | **[ISSUER]** |
|---|---|
| (Party A) | (Party B) |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |

[Signature Page – ISDA Schedule]

**From:** Mike Manning
**To:** Sarah Harris
**Cc:** Opal Kandelas
**Subject:** RE: Fair Hydro -- Supplemental Indenture for Long Term Debt
**Date:** Friday, October 27, 2017 1:02:56 PM

---

For sure no, happy to have you onboard.

Mike

---

**From:** Sarah Harris
**Sent:** Friday, October 27, 2017 1:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Opal Kandelas <Opal.Kandelas@ofina.on.ca>
**Subject:** Fwd: Fair Hydro -- Supplemental Indenture for Long Term Debt

Hi Mike,

Per Malle's e-mail below, would you have any objection if I attend this meeting?

Thanks,
Sarah

Sent from my iPhone

Begin forwarded message:

> **From:** "Hanslep, Malle (MOF)" <Malle.Hanslep@ontario.ca>
> **Date:** October 27, 2017 at 12:49:32 PM EDT
> **To:** "Harris, Sarah (OFA)" <Sarah.Harris@ofina.on.ca>
> **Cc:** "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>
> **Subject: RE: Fair Hydro -- Supplemental Indenture for Long Term Debt**
>
> There is a meeting from 2 to 5 this afternoon in the executive boardroom on this project which is to cover quite a few questions about the structure. I think that if documentation is going to be involved in this project it would be useful for someone to attend. Perhaps you should check with Mike?
>
> ---
>
> **From:** Hanslep, Malle (MOF)
> **Sent:** October 26, 2017 6:48 PM
> **To:** Harris, Sarah (OFA)
> **Subject:** Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
> ---
>
> **From:** Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>

**Sent:** Thursday, October 26, 2017 18:47
**To:** Kandeepan, Ken (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Yep, Carlos (OFA); Kwan, Ronald (OFA); Devine, James (OFA); Kim, John (OFA); Strathy, Anna (OFA); Katona, Keley (MOF); John Psinas; Nelms, Scott (MOF); Montgomery, Kaitlin (MOF); Veinot, Cindy (TBS); Donaldson, Mark (TBS)
**Cc:** Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG)
**Subject:** Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt

I might not have covered everyone with this email

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Saulnier, Brett <bsaulnier@torys.com>
**Sent:** Thursday, October 26, 2017 18:36
**To:** Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
**Cc:** 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
**Subject:** Fair Hydro -- Supplemental Indenture for Long Term Debt

All,

Please find attached a first draft of the supplemental indenture for the long term debt, which we just received from Osler. Osler has advised that this draft remains subject to review and comment by the dealers. Please note that Torys/OPG have not yet reviewed.

Thanks,
Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Carlos Yep
**To:** "LIU Sheen -TREASURY"
**Cc:** Ken Kandeepan; Mike Manning; James Devine
**Subject:** RE: Fair Hydro Plan Protocol Agreement - Subordinated and Junior Subordinated Debt
**Date:** Wednesday, November 15, 2017 3:44:10 PM

---

Hi Sheen
There are 2 main simplifying comments that start by eliminating the need for the full pricing grid solely based on credit rating from BBB to AAA.
1)For the short term funding, it would be more efficient to use one single spread rather than multiple spreads for subordinated and junior subordinated.
2)For long term funding, there are no comparable issuers of subordinated & junior subordinated debt issues. Dealers can provide estimates for the subordinated and junior subordinated spreads for each tenor based on the specific characteristics of the Financing Trust.
Please call if you have any questions or would like to discuss further.
Regards
Carlos

---

**From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
**Sent:** Tuesday, November 07, 2017 1:23 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** PRESTON Stuart -TREASURY <stuart.preston@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>
**Subject:** Fair Hydro Plan Protocol Agreement
Ken,
As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.
Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.
Thanks
Sheen

---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Ken Kandeepan; James Devine; Carlos Yep |
| **Cc:** | John Psinas; Anis Hirani |
| **Subject:** | RE: Fair Hydro Plan Protocol Agreement |
| **Date:** | Wednesday, November 08, 2017 9:25:34 AM |

Hi Guys:
Agree, would be good to discuss. I will have Anis schedule a meeting.

Thanks Mike

---

**From:** Ken Kandeepan
**Sent:** Tuesday, November 07, 2017 2:30 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** John Psinas <John.Psinas@ofina.on.ca>
**Subject:** FW: Fair Hydro Plan Protocol Agreement

We can discuss.

Thanks

Ken k

---

**From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
**Sent:** Tuesday, November 07, 2017 1:23 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** PRESTON Stuart -TREASURY <stuart.preston@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>
**Subject:** Fair Hydro Plan Protocol Agreement

Ken,

As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.

Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.

Thanks

Sheen

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Anis Hirani |
| **To:** | Mike Manning |
| **Subject:** | RE: Fair Hydro |
| **Date:** | Monday, October 30, 2017 3:45:32 PM |

Hi Mike
Ken is available. Waiting to hear from Ron.
Thanks

*Anis Hirani*
Administration Lead
Capital Markets Division
Ontario Financing Authority
www.ofina.on.ca
anis.hirani@ofina.on.ca
Phone: (416) 325-5890
***Please consider the environment before printing this email. ****

---

**From:** Mike Manning
**Sent:** Monday, October 30, 2017 3:40 PM
**To:** Anis Hirani
**Subject:** Fair Hydro
Hi Anis:
Would it be possible to arrange a 15 minute meeting with ken Kandeepan & Ronald Kwan on Fair Hydro tomorrow? Let me know if that is problematic.
Thanks, Mike

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Final Package for OAG |
| **Date:** | Wednesday, October 04, 2017 2:03:35 PM |
| **Attachments:** | AG FHP Report - Consolidated Comments - Oct 4 1100AM TRACKED_Markup.docx |

Hi Anna,

As noted a few minutes ago, I would rewrite that sentence on regulatory practice.

Ron

**From:** Anna Strathy
**Sent:** October-04-17 14:02
**To:** Ronald Kwan ; Ken Kandeepan ; Gadi Mayman ; Mike Manning
**Subject:** FW: Final Package for OAG
**Importance:** High

FYI

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
**Sent:** Wednesday, October 04, 2017 1:55 PM
**To:** Martin Schlaepfer (MOF) <Martin.Schlaepfer@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; William Bromm (CAB) <William.Bromm2@ontario.ca>
**Subject:** Final Package for OAG
**Importance:** High

Hi All,
I've attached the final materials for the AG.

Please let me know ASAP if you have any concerns. Aiming to send very soon.

Thanks for all the great team work!
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | N |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

**Commented [MD(1]:** Are we referring to the emails already provided? If so, I suggest changing this to 'N'.

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure ~~appropriate~~ due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

**Commented [MD(2]:** Are we referring to the Navigant report? If so, can we specify?

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | Y<br>Please see enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 Annual Report~~OEF~~ |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset and in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer~~This wa~~is a normal rate-setting regulatory practice~~ which matched the timing of the capital cost recovery with the benefit to the ratepayer~~. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred). | ~~C 2016-17 Annual Report~~ |

**Formatted:** Highlight

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that way already spreading the cost recovery of the debt over time.<br><br>Finally, ~~T~~the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | N |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used ~~to appropriate account for~~ by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of ~~the~~ Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y<br>See hyperlink |

**Commented [MD(3]:** Are we including? Is there a hyperlink?

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Carlos Yep; Mike Manning; James Devine; John Kim; John Psinas |
| **Subject:** | RE: Financing Plan |
| **Date:** | Thursday, November 16, 2017 2:28:01 PM |

Thanks so just as we suspected there's no legal impediment to issuing debt lower down the curve and refinancing upon maturity
Ken k

**From:** Carlos Yep
**Sent:** Thursday, November 16, 2017 2:27 PM
**To:** Mike Manning ; James Devine ; Ken Kandeepan ; John Kim ; John Psinas
**Subject:** FW: Financing Plan
FYI

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, November 16, 2017 2:24 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Subject:** RE: Financing Plan
I read that as depending financing factors, and on the fact that principal repayments, based on the fair allocation curve, cannot begin until at least 2030, so that they would be looking for 15 year debt to start, not based on any legal or regulatory restriction on the term of the debt.
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Carlos Yep [mailto:Carlos.Yep@ofina.on.ca]
**Sent:** November 16, 2017 2:12 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Subject:** Financing Plan
Malle / Tobias
I am reading the Financing Plan … and there is a section where they indicate a minimum term of the initial debt issuance of 15 years.
Is there anything that you have come across in the FHP Master Trust Indenture or any other document that prevents the FHT to issue in a term for example of 5y or 10yr?
Thanks
Carlos

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ronald Kwan; Ken Kandeepan; John Kim; Mike Manning; Malle Hanslep (MOF); "STEPHEN.ASHBOURNE@blakes.com" |
| **Subject:** | RE: Follow-up call \| OFA, MOF Legal, Stephen Ashbourne |
| **Date:** | Thursday, September 14, 2017 2:19:54 PM |
| **Attachments:** | 23148306-vpdf-Term Sheet - Provincial Support Agreement - May 12.pdf |

Please see the version that we are sending to Tory's reflecting our discussion.
The "final and non-appealable" language is included in square brackets in that version, to be considered and negotiated depending on market issues.
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 14, 2017 2:06 PM
**To:** Anna Strathy; Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Kim, John (OFA); Manning, Mike (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); 'STEPHEN.ASHBOURNE@blakes.com'
**Subject:** Follow-up call | OFA, MOF Legal, Stephen Ashbourne
**When:** September 14, 2017 3:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Conference Call: 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656
To discuss inclusion/exclusion of "final and non-appealable" in Provincial Protection term sheet
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding ~~on the parties~~.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the ~~General~~ Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*)~~,~~;<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity~~ and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the~~ |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| | ~~Obligor's prior written consent~~. |
| **Optional ~~Replacement~~Assumption:** | At any time following the ~~exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable~~occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to ~~replace~~assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor~~ and directly assume all of the Financing Entity's outstanding obligations and liabilities~~. The Financing Entity (including through the Financial Services Manager) will ensure that ~~any obligation and liabilities undertaken or assumed by it will by their terms~~Specified Claims permit such ~~a replacement and assumption (or, if applicable,~~an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination~~) by the Obligor without additional cost or penalty and without~~ of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will ~~become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.~~<br><br>~~The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.~~<br><br>~~The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.~~ be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on Thursday, September 14, 2017 1:14:40 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23148306/15 |
| Description | TOR_2528-#23148306-v15-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Document 2 ID | PowerDocs://TOR_2528/23148306/16 |
| Description | TOR_2528-#23148306-v16-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 19 |
| Deletions | 18 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 37 |

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Malle Hanslep (MOF); "STEPHEN.ASHBOURNE@blakes.com"; Tobias P. Whitfield (MOF) |
| **Cc:** | Gadi Mayman; Anna Strathy; Mike Manning; Ken Kandeepan; John Kim |
| **Subject:** | RE: Follow-up call \| OFA, MOF Legal, Stephen Ashbourne |
| **Date:** | Thursday, September 14, 2017 4:48:53 PM |

Hi Malle, Stephen, Toby,

We managed to have a conversation with Gadi after the scheduled call-in time on the issue raised by OPG/Torys on the "final and non-appealable" wording in the draft term sheet that they struck out.

From a market perspective, we can appreciate OPG's concern on the potential impact. And we appreciate the legal concern on having a trigger that might be arising from a lower court ruling that may not be very well-founded and that the government may want to appeal.

As such, is there some kind of compromise wording that could be put into the term sheet for today, and that would signal that more comprehensive wording would be included in the final agreement that would allow for (and I use the following terms loosely, as I'm sure the lawyers could put in better ones) a ''cure period'', for example, that could allow time for the Province to apply for a court to suspend the impact of the earlier decision without having the protection agreement triggered? Under that kind of clause, we could reduce the likelihood of the framework being collapsed in the case of a less solid court decision, but the Province would potentially step in and make payments, before a final and non-appealable decision (which could be years away, with a risk premium attached), if the process were to go that long in a more serious court challenge and ruling. Could that type of wording be worked out in a final legal agreement?

Ron

-----Original Appointment-----
**From:** Anna Strathy
**Sent:** September-14-17 14:06
**To:** Gadi Mayman; Ronald Kwan; Ken Kandeepan; John Kim; Mike Manning; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); 'STEPHEN.ASHBOURNE@blakes.com'
**Subject:** Follow-up call | OFA, MOF Legal, Stephen Ashbourne
**When:** September-14-17 15:00-15:30 (UTC-05:00) Eastern Time (US & Canada).
**Where:** Conference Call: 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

To discuss inclusion/exclusion of "final and non-appealable" in Provincial Protection term sheet

Toll-free dial-in number: 1-866-602-5461

Local dial-in number:  416-212-8011

Conference ID:  4717656

OFA to moderate

**From:** Anna Strathy
**To:** Gadi Mayman
**Cc:** Ken Kandeepan; Mike Manning; Ronald Kwan
**Subject:** RE: For Discussion with Malle
**Date:** Thursday, November 09, 2017 1:24:29 PM

---

Hi Gadi,

Thank you. I've updated the list to include the items you've flagged below so that we have everything in one place:

Process Agreement

- 2.01 Deliveries to the Province
  - No concerns with removing PILS/tax language
- 2.02 Covenants
  - First use of *commercially reasonable efforts* and then throughout
  - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
  - No concerns with this deletion
  - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
  - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
  - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum
  - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
  - No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
  - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
  - Why not seek consent of the Province when changing its obligations?
- Article V
  - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
  - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
  - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
  - Why remove the Force Majeure clause?

---

**From:** Gadi Mayman
**Sent:** Thursday, November 09, 2017 12:50 PM
**To:** Anna Strathy
**Cc:** Ken Kandeepan ; Mike Manning ; Ronald Kwan

**Subject:** RE: For Discussion with Malle

That lines up with my recollection. In the process agreement on 4.01, the only point that I'll raise in addition to what you've written is that OPCD may have a view. On the Protection Agreement, I also had a note on 2.09c where I was wondering why they wouldn't want the consent of the Province if changing your obligations. On 5.01, we were wondering why OPG want to remove the subrogation after we've taken on the obligations, and why they would care at that point. For 7.04, we were wondering what is meant by collateral in this agreement, and whether it would include sinking funds, because if it does, we should get the sinking funds, not leave them with OPG. One other point I had was on 9.07 and a question of why they'd want the Force Majeure clause removed.

Thanks for putting this together.

Gadi

---

**From:** Anna Strathy
**Sent:** Thursday, November 09, 2017 12:27 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Subject:** For Discussion with Malle

Hi Gadi,

As discussed, here are the areas that you may want to raise with Malle this afternoon before we arrange a meeting with the larger group:

<u>Process Agreement</u>

- 2.01 Deliveries to the Province
  - No concerns with removing PILS/tax language
- 2.02 Covenants
  - First use of *commercially reasonable efforts* and then throughout
  - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
  - No concerns with this deletion
  - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
  - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
  - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum
- 5.02 Reps and Warranties of the Province
  - No concerns

<u>Protection Agreement</u>

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
  - No concerns with removing Trustee
- Article V
  - Edit title to ***Provincial*** *Matters*

- 5.01 Assignment and Subrogation
- 7.04 Release of All Collateral

I've highlighted the last two because I'm not sure I understand what our concerns were on these two areas of the Agreement.

Hopefully these line up with your own notes, but I would recommend just scanning to make sure I haven't missed anything.

Thanks, Anna

**From:** Gadi Mayman
**To:** Anna Strathy
**Cc:** Ken Kandeepan; Mike Manning; Ronald Kwan
**Subject:** RE: For Discussion with Malle
**Date:** Thursday, November 09, 2017 12:50:25 PM

---

That lines up with my recollection. In the process agreement on 4.01, the only point that I'll raise in addition to what you've written is that OPCD may have a view. On the Protection Agreement, I also had a note on 2.09c where I was wondering why they wouldn't want the consent of the Province if changing your obligations. On 5.01, we were wondering why OPG want to remove the subrogation after we've taken on the obligations, and why they would care at that point. For 7.04, we were wondering what is meant by collateral in this agreement, and whether it would include sinking funds, because if it does, we should get the sinking funds, not leave them with OPG. One other point I had was on 9.07 and a question of why they'd want the Force Majeure clause removed.
Thanks for putting this together.
Gadi

---

**From:** Anna Strathy
**Sent:** Thursday, November 09, 2017 12:27 PM
**To:** Gadi Mayman
**Subject:** For Discussion with Malle
Hi Gadi,
As discussed, here are the areas that you may want to raise with Malle this afternoon before we arrange a meeting with the larger group:
Process Agreement

- 2.01 Deliveries to the Province
    - No concerns with removing PILS/tax language
- 2.02 Covenants
    - First use of *commercially reasonable efforts* and then throughout
    - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - No concerns with this deletion
    - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum
- 5.02 Reps and Warranties of the Province
    - No concerns

Protection Agreement

- Need to review the Indemnity Agreement

- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
- 7.04 Release of All Collateral

I've highlighted the last two because I'm not sure I understand what our concerns were on these two areas of the Agreement.

Hopefully these line up with your own notes, but I would recommend just scanning to make sure I haven't missed anything.

Thanks, Anna

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy; Gadi Mayman |
| **Cc:** | Mike Manning; Ronald Kwan |
| **Subject:** | RE: For Discussion with Malle |
| **Date:** | Thursday, November 09, 2017 4:05:10 PM |

Hi Gadi
As discussed.
Thanks
Ken k

**From:** Anna Strathy
**Sent:** Thursday, November 09, 2017 1:24 PM
**To:** Gadi Mayman
**Cc:** Ken Kandeepan ; Mike Manning ; Ronald Kwan
**Subject:** RE: For Discussion with Malle

Hi Gadi,
Thank you. I've updated the list to include the items you've flagged below so that we have everything in one place:

Process Agreement

- 2.01 Deliveries to the Province
  - No concerns with removing PILS/tax language
- 2.02 Covenants
  - First use of *commercially reasonable efforts* and then throughout
  - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
  - No concerns with this deletion
  - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
  - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
  - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
  - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
  - No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
  - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
  - Why not seek consent of the Province when changing its obligations?
- Article V
  - Edit title to ***Provincial*** *Matters*

- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

---

**From:** Gadi Mayman
**Sent:** Thursday, November 09, 2017 12:50 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** RE: For Discussion with Malle

That lines up with my recollection. In the process agreement on 4.01, the only point that I'll raise in addition to what you've written is that OPCD may have a view. On the Protection Agreement, I also had a note on 2.09c where I was wondering why they wouldn't want the consent of the Province if changing your obligations. On 5.01, we were wondering why OPG want to remove the subrogation after we've taken on the obligations, and why they would care at that point. For 7.04, we were wondering what is meant by collateral in this agreement, and whether it would include sinking funds, because if it does, we should get the sinking funds, not leave them with OPG. One other point I had was on 9.07 and a question of why they'd want the Force Majeure clause removed.

Thanks for putting this together.

Gadi

---

**From:** Anna Strathy
**Sent:** Thursday, November 09, 2017 12:27 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Subject:** For Discussion with Malle

Hi Gadi,

As discussed, here are the areas that you may want to raise with Malle this afternoon before we arrange a meeting with the larger group:

<u>Process Agreement</u>

- 2.01 Deliveries to the Province
    - No concerns with removing PILS/tax language
- 2.02 Covenants
    - First use of *commercially reasonable efforts* and then throughout
    - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - No concerns with this deletion
    - OPG likely to use boilerplate description of the guarantee

- 2.02 (c) Indemnity
    - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum
- 5.02 Reps and Warranties of the Province
    - No concerns

<u>Protection Agreement</u>

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
- 7.04 Release of All Collateral

I've highlighted the last two because I'm not sure I understand what our concerns were on these two areas of the Agreement.

Hopefully these line up with your own notes, but I would recommend just scanning to make sure I haven't missed anything.

Thanks, Anna

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Mike Manning |
| **Cc:** | Anna Strathy; Ken Kandeepan; Ronald Kwan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: For our discussion |
| **Date:** | Friday, November 10, 2017 10:46:03 AM |

---

Perhaps Anna could send around a conference call number for 4pm to the usual group and whoever can join will?

---

**From:** Hanslep, Malle (MOF)
**Sent:** November 10, 2017 10:35 AM
**To:** Mayman, Gadi (OFA); Manning, Mike (OFA)
**Cc:** Strathy, Anna (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: For our discussion

Hi,
I contacted Steve and he is hoping to send some comments by mid-day and could have a call from 4 to 4:30.
Malle

---

**From:** Hanslep, Malle (MOF)
**Sent:** November 9, 2017 5:24 PM
**To:** Mayman, Gadi (OFA)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: For our discussion

Hi Gadi,
I spoke to Steve and tomorrow afternoon is a bit soon to have a group meeting on these points as he has been tied up on another matter today and part of tomorrow. Perhaps Toby and I will have a late afternoon call with him tomorrow to go over these issues and we will also review the agreement more carefully taking into account the various comments that you have sent us.
Also, it would be helpful to have a draft of the financing plan since it is an important document being referenced in these agreements as setting out the maximum. I wonder what the possible timing of the Province receiving a draft is as it would be very helpful to assessing the viability of that approach.
Perhaps it would be helpful to schedule a meeting for Tuesday for the larger group to discuss the agreements. Thanks.
Malle

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** November 9, 2017 4:33 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA)
**Subject:** For our discussion

Process Agreement

- 2.01 Deliveries to the Province
    - o No concerns with removing PILS/tax language
- 2.02 Covenants
    - o First use of *commercially reasonable efforts* and then throughout
    - o Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - o No concerns with this deletion
    - o OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - o No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - o CRITICAL – we can be flexible on the wording but we can't agree to removing

Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
    - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
    - No concerns

<u>Protection Agreement</u>

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - Why not seek consent of the Province when changing its obligations?
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Hanslep, Malle (MOF)
**To:** Gadi Mayman; Mike Manning
**Cc:** Anna Strathy; Ken Kandeepan; Ronald Kwan; Tobias P. Whitfield (MOF)
**Subject:** RE: For our discussion
**Date:** Friday, November 10, 2017 10:35:20 AM

---

Hi,
I contacted Steve and he is hoping to send some comments by mid-day and could have a call from 4 to 4:30.
Malle

---

**From:** Hanslep, Malle (MOF)
**Sent:** November 9, 2017 5:24 PM
**To:** Mayman, Gadi (OFA)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: For our discussion

Hi Gadi,
I spoke to Steve and tomorrow afternoon is a bit soon to have a group meeting on these points as he has been tied up on another matter today and part of tomorrow. Perhaps Toby and I will have a late afternoon call with him tomorrow to go over these issues and we will also review the agreement more carefully taking into account the various comments that you have sent us.
Also, it would be helpful to have a draft of the financing plan since it is an important document being referenced in these agreements as setting out the maximum. I wonder what the possible timing of the Province receiving a draft is as it would be very helpful to assessing the viability of that approach.
Perhaps it would be helpful to schedule a meeting for Tuesday for the larger group to discuss the agreements. Thanks.
Malle

---

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** November 9, 2017 4:33 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA)
**Subject:** For our discussion

Process Agreement

- 2.01 Deliveries to the Province
    - o No concerns with removing PILS/tax language
- 2.02 Covenants
    - o First use of *commercially reasonable efforts* and then throughout
    - o Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - o No concerns with this deletion
    - o OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - o No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - o CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
    - o Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
    - o No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - Why not seek consent of the Province when changing its obligations?
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman |
| **Cc:** | Anna Strathy; Mike Manning; Ken Kandeepan; Ronald Kwan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: For our discussion |
| **Date:** | Thursday, November 09, 2017 5:23:52 PM |

Hi Gadi,
I spoke to Steve and tomorrow afternoon is a bit soon to have a group meeting on these points as he has been tied up on another matter today and part of tomorrow. Perhaps Toby and I will have a late afternoon call with him tomorrow to go over these issues and we will also review the agreement more carefully taking into account the various comments that you have sent us.
Also, it would be helpful to have a draft of the financing plan since it is an important document being referenced in these agreements as setting out the maximum. I wonder what the possible timing of the Province receiving a draft is as it would be very helpful to assessing the viability of that approach.
Perhaps it would be helpful to schedule a meeting for Tuesday for the larger group to discuss the agreements. Thanks.
Malle

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** November 9, 2017 4:33 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA)
**Subject:** For our discussion

Process Agreement

- 2.01 Deliveries to the Province
    - o No concerns with removing PILS/tax language
- 2.02 Covenants
    - o First use of *commercially reasonable efforts* and then throughout
    - o Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - o No concerns with this deletion
    - o OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - o No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - o CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
    - o Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
    - o No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - o No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - o Why not seek consent of the Province when changing its obligations?
- Article V
    - o Edit title to ***Provincial** Matters*
- 5.01 Assignment and Subrogation

    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Gadi Mayman; Mike Manning |
| **Cc:** | Ken Kandeepan; Ronald Kwan; Tobias P. Whitfield (MOF) |
| **Subject:** | RE: For our discussion |
| **Date:** | Friday, November 10, 2017 10:55:02 AM |

---

Happy to. Will send an invite shortly.

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Friday, November 10, 2017 10:46 AM

**To:** Gadi Mayman ; Mike Manning

**Cc:** Anna Strathy ; Ken Kandeepan ; Ronald Kwan ; Tobias P. Whitfield (MOF)

**Subject:** RE: For our discussion

Perhaps Anna could send around a conference call number for 4pm to the usual group and whoever can join will?

**From:** Hanslep, Malle (MOF)
**Sent:** November 10, 2017 10:35 AM
**To:** Mayman, Gadi (OFA); Manning, Mike (OFA)
**Cc:** Strathy, Anna (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: For our discussion

Hi,
I contacted Steve and he is hoping to send some comments by mid-day and could have a call from 4 to 4:30.
Malle

**From:** Hanslep, Malle (MOF)
**Sent:** November 9, 2017 5:24 PM
**To:** Mayman, Gadi (OFA)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Whitfield, Tobias P. (MOF)
**Subject:** RE: For our discussion

Hi Gadi,
I spoke to Steve and tomorrow afternoon is a bit soon to have a group meeting on these points as he has been tied up on another matter today and part of tomorrow. Perhaps Toby and I will have a late afternoon call with him tomorrow to go over these issues and we will also review the agreement more carefully taking into account the various comments that you have sent us.
Also, it would be helpful to have a draft of the financing plan since it is an important document being referenced in these agreements as setting out the maximum. I wonder what the possible timing of the Province receiving a draft is as it would be very helpful to assessing the viability of that approach.
Perhaps it would be helpful to schedule a meeting for Tuesday for the larger group to discuss the agreements. Thanks.
Malle

**From:** Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
**Sent:** November 9, 2017 4:33 PM
**To:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Strathy, Anna (OFA); Manning, Mike (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA)
**Subject:** For our discussion

Process Agreement

- 2.01 Deliveries to the Province
    - No concerns with removing PILS/tax language
- 2.02 Covenants

    - First use of *commercially reasonable efforts* and then throughout
    - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
    - No concerns with this deletion
    - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
    - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
    - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
    - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
    - No concerns

<u>Protection Agreement</u>

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity
    - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - Why not seek consent of the Province when changing its obligations?
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman |
| **Subject:** | RE: Gadi"s meeting with Ken Hartwick |
| **Date:** | Wednesday, September 06, 2017 3:56:15 PM |

There is nothing new to report. As you know from yesterday's meeting, we are waiting for Energy to gives us the green light to share the current provincial support agreement with OPG. John Kim is working on this, and I spoke to him on this just a few minutes ago. He hopes to hear from them shortly. I will let you and Gadi know as soon as I find out.

Regards, Mike

---

**From:** Anna Strathy
**Sent:** Wednesday, September 06, 2017 3:46 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Gadi's meeting with Ken Hartwick

Hi Mike,

Just following up on this item from your meeting with Gadi yesterday. Gadi's meeting with Ken Hartwick tomorrow at 7:30am – please let him know if there is anything he should be aware of in advance.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan |
| **Cc:** | Gadi Mayman; Mike Manning |
| **Subject:** | RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx |
| **Date:** | Monday, October 02, 2017 12:47:59 AM |
| **Attachments:** | Government Response to AG FHP Report_Sep29-17 v4.1_Markup2.docx |

Hi Anna, Ken,

A few additional suggestions or queries/comments of clarification.

Ron

---

**From:** Anna Strathy
**Sent:** October-01-17 7:37 PM
**To:** Ken Kandeepan
**Cc:** Gadi Mayman ; Mike Manning ; Ronald Kwan
**Subject:** RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx

Thanks very much for these. On your first comment (re the AG citing the FAO report), that is how the paragraph was submitted to Energy on Friday, but it looks like they changed it.

I'll wait to hear from everyone else before sending consolidated comments to Dave.

The Deputies and Gadi are meeting with Chiefs of Staff and Mike Jancik tomorrow morning at 8:30am to discuss these first drafts. I expect a second draft – of our consolidated comments and govt response – will be circulated by tomorrow eod.

---

**From:** Ken Kandeepan
**Sent:** Sunday, October 01, 2017 1:24 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Government Response to AG FHP Report_Sep29-17 v4.1.docx

Hi Anna

Pls see a few edits and comments on the Government response, I am ok with the consolidated comments.

Thanks and happy to discuss tomorrow.

Ken K

**WORKING DRAFT – GOVERNMENT RESPONSE TO AGO REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and recommendations expressed by the Office of the Auditor General (OAG) in its report entitled *The Fair Hydro Plan: Concerns About Fiscal transparency, Accountability and Value For Money*.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. Ontario's Fair Hydro Plan (OFHP) has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from ~~the~~a reduction.

Since 2003, ~~Ontario has invested~~ nearly $50 billion has been invested in the electricity system, including more than $35 billion in electricity generation to ensure the system is clean and reliable. The costs of these investments are ~~funded~~paid for in part through the Global Adjustment (GA). The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG assertion, many of these generators will be able to operate past their contract term, meaning that generating assets are expected to have ongoing useful life and will benefit future ratepayers by reducing the need to finance the development of new generating assets.

To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG assertion, the financial and accounting framework used to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

Ontario Power Generation (OPG) is beginning the process of raising funds to finance these deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than the estimate~~d~~s in the report of the OAG. Total borrowing estimates for the program has been revised down substantially by government since the Financial Accountability Office (FAO) released its report in May 2017 and OPG and its financing entity's borrowing costs are now forecast to be lower than original estimates.

With respect to the Province's financial statements, they are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS) and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector and PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

**Commented [RK1]:** In the past, Energy staff have noted that the average percentage amount would differ for non-residential. ENERGY should confirm.

**Commented [RK2]:** Not part of the government's capex.

**Commented [KK3]:** Wasn't the borrowing costs estimated in the FAO report and the AG is simply citing that. If so we should say "estimated in the FAO's Report on the OFHP cited by the Ag in her report".

The Government disagrees with two fundamental assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*.

Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

> *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers.***

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent ~~of another government organization~~ of the Ontario government is contradictory to accepting the use of rate-regulated accounting by OPG and Hydro One, both are regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province of Ontario~~, using rate-regulated accounting~~.

The OAG states that the Province's planned accounting inappropriately transfers long-term accountability for higher electricity bills to future governments. The accounting, which will be determined once the transaction is complete, will reflect the economic substance of the transaction in accordance with PSAS. In addition, the policy decision regarding the allocation of the cost of OFHP to the ratepayers and to the taxpayers is a decision of the current government. The accounting is expected to reflect that allocation decision. A decision of a future government to, for example, move the cost of all of OFHP to the taxpayer, is a decision with economic consequences and, therefore, accounting recognition. The report of the OAG suggests that such a decision has no consequences or fiscal impact.

In closing, Ontario's Fair Hydro Plan is delivering the single-largest reduction in electricity rates in the province's history. The plan operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with PSAS as well as ~~and~~ ensuring~~s~~ that the fairness goals underlying the program are achieved in a cost-effective manner.

**Commented [KK4]:** I would strengthen this para by pointing out that the rate regulated accounting adopted by both OPG and H1 and regulated by the OEB has been accepted by the markets, external auditors and other independent observers supporting the fact that the OEB is in fact independent of the Ontario Government.

**Commented [RK5]:** Is this what is intended to be meant?

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan |
| **Cc:** | Gadi Mayman; Mike Manning; Ronald Kwan |
| **Subject:** | RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx |
| **Date:** | Sunday, October 01, 2017 7:37:30 PM |

Thanks very much for these. On your first comment (re the AG citing the FAO report), that is how the paragraph was submitted to Energy on Friday, but it looks like they changed it.
I'll wait to hear from everyone else before sending consolidated comments to Dave.
The Deputies and Gadi are meeting with Chiefs of Staff and Mike Jancik tomorrow morning at 8:30am to discuss these first drafts. I expect a second draft – of our consolidated comments and govt response – will be circulated by tomorrow eod.

**From:** Ken Kandeepan
**Sent:** Sunday, October 01, 2017 1:24 PM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Mike Manning ; Ronald Kwan
**Subject:** Government Response to AG FHP Report_Sep29-17 v4.1.docx
Hi Anna
Pls see a few edits and comments on the Government response, I am ok with the consolidated comments.
Thanks and happy to discuss tomorrow.
Ken K

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan |
| **Cc:** | Gadi Mayman; Mike Manning |
| **Subject:** | RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx |
| **Date:** | Monday, October 02, 2017 7:45:42 AM |

Thank you for these, Ron.

**From:** Ronald Kwan
**Sent:** Monday, October 02, 2017 12:48 AM
**To:** Anna Strathy ; Ken Kandeepan
**Cc:** Gadi Mayman ; Mike Manning
**Subject:** RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx

Hi Anna, Ken,
A few additional suggestions or queries/comments of clarification.
Ron

**From:** Anna Strathy
**Sent:** October-01-17 7:37 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** RE: Government Response to AG FHP Report_Sep29-17 v4.1.docx

Thanks very much for these. On your first comment (re the AG citing the FAO report), that is how the paragraph was submitted to Energy on Friday, but it looks like they changed it.
I'll wait to hear from everyone else before sending consolidated comments to Dave.
The Deputies and Gadi are meeting with Chiefs of Staff and Mike Jancik tomorrow morning at 8:30am to discuss these first drafts. I expect a second draft – of our consolidated comments and govt response – will be circulated by tomorrow eod.

**From:** Ken Kandeepan
**Sent:** Sunday, October 01, 2017 1:24 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Government Response to AG FHP Report_Sep29-17 v4.1.docx

Hi Anna
Pls see a few edits and comments on the Government response, I am ok with the consolidated comments.
Thanks and happy to discuss tomorrow.
Ken K

**From:** Mike Manning
**To:** Ken Kandeepan; Gadi Mayman
**Cc:** Anna Strathy
**Subject:** RE: IOD Forecast
**Date:** Thursday, September 14, 2017 1:17:18 PM

---

I guess it would be interesting to know the quantum of IOD savings if we were to move down the curve as you've indicated. As Gadi knows very well, it is fairly easy to move down the curve, but there are probably limits in terms of investor appetite and spread distortions, etc. Nevertheless, looking at potential cost savings is something we have always included in our Financing Plan as a strategy which could be exploited to reduce IOD costs. I think it is a good idea to evaluate the potential need for savings earlier rather than later as savings diminish as we progress throughout the year. Also not helped by our strategy of getting ahead of pace. It could also impact performance measurement as it would be outside of our current assumptions. Again performance measurement is not an over-riding concern and can be addressed.

Mike

-----Original Message-----
From: Ken Kandeepan
Sent: Thursday, September 14, 2017 1:00 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IOD Forecast

Good point; doing a quick back of the envelope it appears that if we issue the balance of slightly over $9B at the 3 year term the average term for the fiscal year is closer to 10 years from the current 13.4 for borrowings to date.

Extending the 3 year issuance to include say pre-borrowings of another $3B or so will reduce average term to 9 years. The 2017-18 Debt Management Plan prescribes a term structure of 6.5 years at the minimum, 10.6 as average and 14.7 as max.

Risk should be able to work out the IOD savings accordingly and should be able to provide same tomorrow. Mike pls feel free to point out anything that is lacking in the above.

Thanks

Ken k

-----Original Message-----
From: Gadi Mayman
Sent: Thursday, September 14, 2017 12:41 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IOD Forecast

Looking at Quebec's large 3-year FRN made me wonder what our IOD Forecast would look like if we came in closer to the shorter end of our approved term selection range, rather than closer to the top as we've been for the past six or seven years?

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Ken Kandeepan; Gadi Mayman |
| **Cc:** | Mike Manning; Anna Strathy |
| **Subject:** | RE: Issues already decided |
| **Date:** | Tuesday, November 14, 2017 10:00:08 AM |

Hi Ken,

Is it fair to point out Blakes' two policy (not legal) questions raised on the role of the FSM (vs OPG itself) in the agreements, and on a lower standard of compliance on commercially reasonable vs best efforts; and Malle's comment on how if they are in default of the process document, that the consequence seems more on the Province – as it triggers a default and the Province's obligations – if I captured those legal comments correctly.

The lawyers can say it better at the meeting, of course.

Ron

---

**From:** Ken Kandeepan
**Sent:** November-14-17 09:48
**To:** Gadi Mayman
**Cc:** Mike Manning ; Ronald Kwan ; Anna Strathy
**Subject:** Issues already decided

Hi Gadi

As discussed the following were already decided upon last Friday:

- The Province will accept the removal of the tax information requirements from the Process Agreement
- The Province will accept OPG's revisions to the program maximum requirements in the Process Agreement, as Malle suggested the briefing note to the two ministers will cover any potential risks to the Province from OPG setting the maximum as well as mitigation strategies.
- As very clearly explained by Cindy, the Province does not run the risk of large contingent liabilities in the Public Account's as a result of accepting OPG's revisions to the program maximum.
- In the interests of time the Indenture Trustee should be removed as a party to the Protection Agreement; this can be done by removing OPG's ability to issue US Debt which is now part of the Master Indenture Trust. Naturally OPG may have concerns however, these concerns should be alleviated by pointing out that the removal can be revisited, say one year hence.

Be useful if you can mention this at the start since we can address other outstanding issues.

Thanks

Ken k

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Monday, October 16, 2017 12:55:32 AM |
| **Attachments:** | TBS FHP QAs 20171013 (2)_OPCD clean_Markup.docx |

Hi Anna,

And some suggestions on the TBS set of Qs&As too.

Ron

**From:** Anna Strathy

**Sent:** October-15-17 7:40 PM

**To:** Ronald Kwan

**Cc:** Gadi Mayman ; Mike Manning ; Ken Kandeepan

**Subject:** Re: KMs and Q&As

Thanks Ron. I'm expecting that we'll have an opportunity to provide input after the 8am meeting tomorrow. I'll make sure that your comments are passed on.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 15, 2017, at 12:57 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
>
> Slide 4 seems to use 17-18 numbers that are full-year estimates.
>
> The approved Ministry of Energy Estimates for 17-18, which are public at https://www.ontario.ca/page/expenditure-estimates-ministry-energy-2017-18#section-3, shows the amounts based on in-year implementation timelines. It would seem to make more sense to go with 17-18 numbers consistent with Estimates, unless Energy and TBS have a good rationale to do otherwise.
>
> I believe the pro-rated numbers were also provided to the FAO when we were interacting with FAO staff prior to the FAO report in the spring.
>
> On slides 5 and 9, should the last bullet be amended? I'm not sure "consulted with" is the right way to position the role of third party, external auditors (KPMG and E&Y). It might be better to have separate sentences or bullet for describing the role of the external auditors. Ken and OPCD may have a view on that.
>
> On slide 8, the first bullet, I think the distinction between OPG and the financing entity should be maintained – "sold to a financing entity (e.g., a trust ) established by OPG…."
>
> Ron
>
> **From:** Anna Strathy
>
> **Sent:** October-14-17 9:56 AM
>
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>

**Subject:** Fwd: KMs and Q&As

FYI deck for technical briefing attached, with input from IESO pending. Q&As coming later today.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 13, 2017 at 8:00:41 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: RE: KMs and Q&As**
>
> Hi everyone,
> Attached is an updated deck based on a discussion with our MO this afternoon. This version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
> We've sent IESO the slide for feedback and input. The text that is currently on IESO's slide was from TBS. We will share a new version once we receive that input.
> The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS.
> For Monday morning's meeting we will use the technical deck and QAs.
> Thanks,
> Martin
>
> ---
>
> **From:** Schlaepfer, Martin (ENERGY)
> **Sent:** October 13, 2017 6:30 PM
> **To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
> **Subject:** Re: KMs and Q&As
> Yes, we will share back the consolidated version once we have

incorporated everything.

Thanks.

Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,

Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.

Thanks

Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As

Thanks, Anna.

Allison how are we doing on TBS input?

Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Martin,

Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.

Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.

Anna

---

**From:** Schlaepfer, Martin (ENERGY)
[mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Attached is a first draft of the technical deck for review and input.
Sorry for the short turnaround but we will need this for the weekend.
Any status update on the QAs?
Thanks,
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY)
[mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,

Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

# Ontario's Fair Hydro Plan

## QUESTIONS & ANSWERS

*TBS*

### Key Messages

- The government respects independent officers of the legislature, and values the important perspective they bring but does not agree with the assertions and conclusions expressed in the Auditor General's Fair Hydro Plan report.

- The government has a strong track record of producing high-quality financial reports on a timely basis and continues to present the province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards.

- In developing the Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

- The Fair Hydro Plan operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards and ensures the goals underlying the program are achieved in a cost-effective manner.

- The implementation of Ontario's Fair Hydro Plan is ongoing, with significant decisions with accounting and financial implications still being finalized. The financing plan and its impact will continue to be transparent and fully available to credit rating agencies, securities regulators, and the public.

- The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General in providing its independent views to the Legislative Assembly.

DRAFT

## Top Questions

1. **The Auditor General says that the accounting structure for Ontario's Fair Hydro Plan is not transparent, has poor value for money, and is not in accordance with Public Sector Accounting Standards. How do you respond?**

   The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

   The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

   With regards to the Auditor General's report on Ontario's Fair Hydro Plan (OFHP) – while the government does not agree with the assertions and conclusions expressed in the report, the government thanks the Office of the Auditor General for its report.

   OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results is transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

DRAFT

The Ministry of Energy would welcome further questions about OFHP and the government's investments in a reliable energy system.

2. **The Auditor General makes two recommendations in her report – to record the true financial impact of Ontario's Fair Hydro Plan; and to use a financing structure that is the least costly for Ontarians. Will you adopt these recommendations?**

   The government does not agree with the assertions and conclusions expressed in the report.

   In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

   On the point of "a financing structure that is the least costly for Ontarians": Program area to develop a stronger argument for this point.

   The OFHP financing structure has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

**Commented [HS(1]:** OFA

**Commented [RK2R1]:** Would it be appropriate to insert the response from the other set of Qs&As, as below?

The policy objective of OFHP is to more fairly allocate the cost to ratepayers over the useful life, not the contractual term, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base.

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected in different interest costs. Having the rate-base pay is not a new policy, for example Hydro One has borrowed in the capital markets since the early 2000s.

The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report and is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Office (FAO).

Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

The Province will continue to prepare its consolidated financial statements in accordance with PSAS and continue to build on a track record of responsible fiscal management.

3. **Both the Auditor General and the Financial Accountability Officer have raised serious concerns about the accounting treatment of the electricity cost refinancing initiative. Why should Ontarians believe this government over two independent officers of the Legislature?**

The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history.

In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with PSAS and continue to build on its track record of responsible fiscal management.

4. **The Auditor General says that you are "obfuscating" the true financial impact of Ontario's Fair Hydro Plan through a "needlessly complex" accounting structure. How do you respond?**

   Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   OFHP is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   While the implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized, the financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

5. **Why do you keep differentiating between ratepayers and taxpayers? At the end of the day, the cost of Ontario's Fair Hydro Plan is being borne by Ontarians now and in the future.**

   Ontario's Fair Hydro Plan (OFHP) operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The framework has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

Need more information from program area re: rationale in differentiating between ratepayers and taxpayers.

Commented [HS(3]: energy

6. **How can you justify the $4 billion in additional interest expenses that will be borne by ratepayers because of the way the government has structured electricity cost refinancing (i.e. using Ontario Power Generation to finance 55 per cent, at a higher interest rate than the Province, instead of the Province financing the entire electricity cost financing)?**

   Ontario's Fair Hydro Plan (OFHP) is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   The accounting will reflect the economic substance of the transactions in accordance with Public Sector Accounting Standards (PSAS) and will differentiate those costs of OFHP borne by taxpayers versus those borne by ratepayers.

   The Auditor General's report suggests that all the costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Officer (FAO).

   Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

   For further questions about borrowing estimates, please contact the Ministry of Finance.

7. **The AG claims that when the government first gave Ontarians an 8 per cent break on their bills, it was reported on the books properly. She says when it jumped to 25 per cent, the accounting changed. Isn't it obvious you're cooking the books to suit your needs?**

   - *Need information from program area*

8. **The Auditor General said that a similar move to legislate accounting to defer costs was proposed with the restructuring of the Ontario electricity sector in the late 1990s, but the Auditor General's opinion at that time was that this would represent a departure from a central tenet of generally accepted accounting principles. The government at that time heard these concerns, and made the decision to not create an asset for future anticipated ratepayer payments. Why does the government think this is ok now?**

   The Auditor General's report makes a comparison between Ontario's Fair Hydro Plan (OFHP) and the Ontario Electricity Financial Corporation (OEFC) stranded debt. There are, however, crucial differences between the two.

   For example, the OEFC stranded debt had already been incurred when the restructuring took place.

   In the case of OFHP, the difference between what will be collected and what will be paid to generators is considered to be an asset in accordance with the accounting definition, as it will generate a specific future revenue stream in the form of the CEA.

   It is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and the 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer is a normal rate-setting regulatory practice.

   The Debt Retirement Charge (DRC) represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).

   The OFHP Global Adjustment deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (versus the contract lengths that may be shorter than the expected useful life of the assets).

   The difference between the 1999 restructuring and OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers.

   The intention of OFHP is to be forward-looking, to ensure that ratepayers are sharing current and future costs, whereas the DRC was backward-looking,

**Commented [RK4]:** Another crucial difference is the context of the broader electricity sector structure then and now.

In 1999, the sector was broadly being set up as being market and competitive-based, and OEFC was not rate-regulated, and the DRC was put in place in that context, as unbundled.

Today, the sector is broadly speaking essentially fully-regulated or contracted, and the FHP GA deferral structure fits within that context.

DRAFT

replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.

9. **What will happen if interest rates rise? The Financial Accountability Officer (FAO) estimates that if interest rates were to rise, the true cost of Ontario's Fair Hydro Plan could be between $69 and $93 billion. How can you justify shifting this heavy burden onto future generations?**

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs of Ontario's Fair Hydro Plan (OFHP), and while total borrowing costs will not be known until the program is complete, accumulated interest is expected to be considerably less than the estimates cited in the May 2017 report of the Financial Accountability Office (FAO).

   Total borrowing estimates over the thirty year life of Ontario's Fair Hydro Plan (OFHP) have been revised down substantially by the government since the Financial Accountability Office (FAO) released its report, and borrowing costs are now forecast to be substantially lower than original estimates.

   Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

**Commented [RK5]:** Just an aside. The Q seems to be more about the risk and cost of interest rates rising generally, versus what may be more a response on a lower interest rate now based on a lower estimated spread at a point in time.

## Government Officials

10. **The Auditor General says that even your own government officials flagged the unnecessarily high costs of Ontario's Fair Hydro Plan – and yet you chose to proceed. How can you justify this?**

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    Multiple options were considered in creating the OFHP framework – such as to have local distribution ~~centres~~ companies finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some local distribution ~~centres~~ companies to finance the balances.

    The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

Ultimately, OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

## Audit Opinion

**11. The government just received another qualified audit opinion on its Public Accounts – this time based on two separate issues. Why do you continue to disagree with the Auditor General?**

The government continues to move forward and present the Province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards (PSAS). Ontario has a strong track record of producing high-quality financial reports on a timely basis. The Auditor General's qualified opinion is based on a different interpretation of PSAS for net pension assets and recognition of market accounts.

Last year there was a disagreement among the Province's professional accounting staff and the Auditor General's Office on the appropriate application of PSAS regarding pension accounting. As a result, the Pension Asset Expert Advisory Panel was established to deliver independent advice and recommendations on the issue to the Province.

The independent panel members concluded the Province's share of the net pension assets of both the Ontario Teachers' Pension Plan and the Ontario Public Service Employees' Union Pension Plan should be recognized in Ontario's financial statements.

After significant deliberation, including consideration of the recommendations of the panel, Ontario confirmed that the accounting for these plans prior to 2015-16 was appropriate, and are prepared in accordance with public sector accounting standards for pension asset accounting. Further, EY provided additional analysis and concluded that no valuation allowance was required for either plan as of March 31, 2017. The 2016-17 financial statements include these pension assets, and we continue to apply the accounting treatment of pension assets that the Province has used consistently since 2001. In addition, the 2015-16 financial statements were restated to include these assets.

This year the Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects the financial position of the IESO-administered markets at year-end. This change was supported by the IESO's audit committee, its independent external auditor, and finally by the Office of the Provincial Controller. This change

also has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

**12. The Auditor General says that you anticipated the government would receive a qualified audit opinion – and accepted this risk. In the private sector this would be unacceptable. How do you figure you can get away with this?**

The Province's financial statements are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

DRAFT

**13. Are you concerned that the Auditor General will issue an adverse opinion on the Province's Public Accounts due to Ontario's Fair Hydro Plan accounting? What would be the impact on the Province's credit rating?**

It would be inappropriate to speculate about how the Auditor General may issue an opinion for Public Accounts next year. The implementation of Ontario's Fair Hydro Plan (OFHP) is ongoing, with significant decisions with accounting and financial implications still being finalized.

The Ministry of Energy, Finance, and the Treasury Board Secretariat continue to work closely with Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), as well as third-party experts to ensure due diligence.

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

The financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

**14. The Auditor General says that she has consulted with all of the Auditor Generals in Canada – and they agree with her assessments. How are we supposed to believe this government when all independent auditors in the country say you are wrong?**

In developing Ontario's Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

DRAFT

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

15. **Are you going to hire an expert advisory panel, as you did on the pension asset accounting matter, to settle this dispute with the Auditor General? If so, what authority would this panel have?**

    There are no plans to establish a panel at this time.

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    The Province will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

## Independent Electricity System Operator (IESO)

16. **The Auditor General was critical of the Independent Electricity System Operator's accounting changes, which formed part of her basis for a qualified opinion in the 2016-17 Public Accounts. Are these accounting changes inappropriate?**

    *On recognizing market accounts' assets:*

    The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of the IESO-administered markets at year-end.

This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

This change has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

*On rate-regulated accounting:*

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

## Rate-regulated Accounting

**17. Why use rate-regulated accounting? What is its benefit?**

In certain circumstances, an organization may be required to incur a large expenditure that will be recovered from ratepayers in the future.

For example, damage caused by an ice storm that results in extraordinary costs to restore a disruption of electricity services for customers. Such costs are subject to application and approval for recovery by the regulator over a specific time period.

DRAFT

What rate-regulated accounting does is it allows organizations to recognize those costs, which can be significant within a year but will generate benefits over time, to be matched over the same period that the amounts are recovered from ratepayers.

**18. The Auditor General says that the Independent Electricity System Operator's decision to adopt rate-regulated accounting was a deviation from Public Sector Accounting Standards, and cautioned against its use in her Independent Auditor's Report. Why was this change made and was it appropriate?**

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

Paragraph 11 of the *Introduction to Public Sector Accounting Standards* ("Introduction") states: "When applying the CPA Canadian Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles (GAAP), Section PS 1150."

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

It is worth noting that currently 8 out of 9 electricity system operators in North American markets employ accounting for rate-regulated assets, including the IESO.

**19. The Auditor General says that the use of rate-regulated accounting is inappropriate for the Independent Electricity System Operator and the Ontario Energy Board according to U.S. Generally Accepted Accounting Principles. How do you respond?**

In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the Auditor General's report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must an independent regulator." This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

> *"The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers"*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically to not preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent (FAS 71, par. 64).

In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One – both of which are regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

*IESO Response:*

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

## Legislated Accounting

**20. The Auditor General says that you are essentially making up your own accounting rules. How are Ontarians supposed to believe things like a "balanced budget" when you keep changing the rules?**



DRAFT

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The OFHP operates under a financial and accounting framework that is appropriate for its intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS). The recording of any asset resulting from transactions of OFHP will be assessed for recognition and measurement based on PSAS, and where appropriate, other accounting guidance where PSAS is silent on the issue.

**21. The Auditor General says that the Province legislated accounting through the Ontario Fair Hydro Plan Act, which is not allowed according to Public Sector Accounting Standards. Is this true?**

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based – they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

The role of the Ontario Energy Board (OEB) and its mandate is provided in legislation. It is not uncommon for government policy, through regulations, to provide the ground rules over which the OEB is to preside.

This is the case with Ontario's Fair Hydro Plan (OFHP) itself, as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review, and make conclusion on submissions brought forward.

## Relationship with the Office of the Auditor General

**22. The Auditor General alleges the government withheld information from her on the accounting treatment for Ontario's Fair Hydro Plan. Why would she say that?**

The government is committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

The implementation of Ontario's Fair Hydro Plan is ongoing, with significant accounting and financial decisions still being finalized.

Senior ministry officials have met and continue to work with the Office of the Auditor General by participating in interviews and providing documentation.

*If pressed:*

The Auditor General was informed throughout the course of this process. Program area to add details (i.e. number of meetings, documents, etc.)

*If asked about the Ministry of Energy emails:*

The Ministry of Energy, Finance, and the Treasury Board Secretariat are committed to assisting the Auditor General. For questions related to the Ministry of Energy, please contact them directly.

## Future Governments

**23. The Auditor General says that you are essentially handcuffing future governments with your financing structure. Why should future governments have to pay for your decisions?**

By responsibly managing the Province's finances, Ontario balanced the budget in 2017-18, and will maintain a balanced budget for the future.

With a growing economy and a balanced budget, this is the time to make investments in key services that matter most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

Over the last decade, ~~the~~ government policies ha~~ve~~s supported rebuildin~~g our~~the electricity transmission and distribution grid, invested in clean generation,

**Commented [RK6]:** Suggested rewording here and below, as these investments were not all made by the government itself or by its agencies.

and closed the last coal-fired power plant. Prices have increased because our electricity system is being transformed – ~~more than~~nearly $~~5~~70 billion has been invested to modernize the system.

Commented [RK7]: To reflect the change in the basis of this number, as per Energy Qs&As, to include MEU investments in the distribution grid.

The government heard from people across the ~~P~~province that the price of electricity had risen too quickly, which is why Ontario's Fair Hydro Plan (OFHP) will ensure costs are shared more fairly over the years ahead.

~~As~~ The Ontario electricity sector invested in renewing ~~our~~the provincial electricity system, ~~the government invested~~ including many new generating facilities, most of which operate under 20-year contracts. Some of these generating facilities~~ors~~ are expected to provide value to the electricity system beyond their contract lives. There is an opportunity to recognize the long-term benefit of these assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

To relieve the current burden on ratepayers and share costs more fairly, a portion of the Global Adjustment (GA) is being refinanced. Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

In the early years, a portion of the costs covered by the GA is being refinanced to reduce pressure on today's electricity ratepayers. In later years, the cost of refinancing will be recovered from ratepayers.

OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and ensures the goals underlying the program are achieved in a cost-effective manner.

The government recognizes that a fiscally sound approach to managing the Province's finances will provide the foundation for the long-term well-being and prosperity of Ontarians, and protect the public services that Ontarians rely on.

For further questions related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

**24. Q re: Loss of Public Trust**

## Asset Sales

**25. Will you buy back Hydro One so that it is back under public control?**

Maximizing the value of designated assets is part of the government's economic plan for Ontario. The net revenue gains from these transactions are helping the government to deliver on its plan by investing in infrastructure.

The *Trillium Trust Act, 2014*, provides for the dedication to the Trillium Trust of net revenue gains associated with the sale of designated assets to support investments in transit, transportation and other priority infrastructure across the province.

The Province has also committed to using the cash amount of the proceeds related to the book value of the Hydro One shares sold to pay down the Province's electricity sector debt and other payables, helping to reduce the debt of the Ontario Electricity Financial Corporation ("OEFC"), which manages and pays down the debt and other liabilities of the former Ontario Hydro.

The government is on track to generate, over time, $4 billion in net revenue gains to be invested in transit and infrastructure, along with $5 billion to reduce debt, from broadening Hydro One's ownership.

The government will remain, by law, the largest single shareholder in Hydro One, restricting the Province from selling down to less than 40 per cent of the voting securities in Hydro One – and no other single shareholder or group of shareholders working in concert will be permitted to hold more than 10 per cent of the company's shares.

[For questions related to the Province's asset ~~sales~~optimisation initiative ~~planning~~, please direct your questions to the Ministry of Finance.]

**26. What else will you sell just so that you can "balance the budget"?**

The government has restored balance through targeted, measured and fiscally responsible decisions — managing growth in program spending and fostering job creation and economic growth.

A balanced budget also gives the government the fiscal flexibility to do more to help people. This is the time to make investments in key services that matter most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

**Formatted:** Font: Italic

**Commented [RK8]:** Suggest discouraging this kind of response. Other parts of this Q&A set typically provide at least a top line, active response on the government's policies, such as those on the electricity sector, including the FHP. It would be better not to have an immediate redirect here.

DRAFT

The government is committed to dedicate net revenue gains from the sale of designated assets to the Trillium Trust, which is helping to fund transit, transportation and other key infrastructure projects across Ontario.

[For any questions related to the Province's asset optimisation initiative ~~sales planning~~, please direct your questions to the Ministry of Finance.]

**Commented [RK9]:** Preference would be to omit this altogether. The preceding paragraph is a better response.

## Government Advertising

**27. How can you justify spending $5.5 million on self-congratulatory advertising for Ontario's Fair Hydro Plan?**

The government continues to communicate useful, factual information to the public while maintaining Ontario's status as a national and international leader in government advertising oversight.

Ontario is the first and only jurisdiction in Canada to have legislation that bans government-paid partisan advertising in newspapers, magazines, billboards, radio, and television.

Ontario needs government advertising that is appropriate, reasonable and effective because the public has a right to know how public money is being spent, and why the government is bringing forward important policy changes.

At this time, I would like to clarify that the Treasury Board Secretariat is *not* responsible for individual line ministry advertising campaigns, and does not determine how much funding is allocated to any campaign.

For further questions about specific advertisements or advertising campaigns related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

***28. Placeholder: Q regarding Advertising Standards Council***

## Executive Compensation

**29. How can you justify the exorbitant salaries paid to Hydro One executives when families are struggling to pay their hydro bills?**

The government remains committed to ensuring transparency and accountability in how broader public sector employers manage executive compensation.

However, Hydro One is now a publicly traded company, and decisions regarding compensation are not made directly by the government.



DRAFT

For further questions about executive compensation and oversight of specific organizations, please contact the Ministry responsible.

DRAFT

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan |
| **Cc:** | Gadi Mayman; Ronald Kwan; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 2:09:38 PM |

---

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Ronald Kwan ; Mike Manning
**Subject:** RE: KMs and Q&As

Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>

**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting

Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Ronald Kwan; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 1:59:43 PM |
| **Attachments:** | QA_AG Report OFHP_Technical Briefing (OFA).docx |

Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman ; Ronald Kwan ; Mike Manning ; Ken Kandeepan
**Subject:** RE: KMs and Q&As
Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As
Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred costs should be borne by the rate-base and not the tax-base.

Based on this policy decision, it was decided that the debt obligation would be recognized as a regulatory asset that would be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (i.e., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be noted that the FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

Commented [AS1]: Do we want to be so precise in these estimates? Or use the language from the government response "from almost $28 billion to less than $20 billion"

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2017 period; and

Commented [AS2]: ?

- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% down to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages an $18 billion nuclear fund and as an entity regulated by the Ontario Energy Board (OEB), OPG also has extensive experience with regulatory deferral and variance accounts.

**Commented [KK3]:** The asset position of the fund as of the last financial statements 31, Dec 2016 showed assets of close to $20 billion while the current valuation is over $20B

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties (…) Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Based on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

~~Response prepared by MOF/ OFA as Part of the Minister's Speaking Points~~

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province. Why not have the Province borrow for the OFHP?**

The policy objective of OFHP is to smooth the cost to ratepayers over the useful life, not the contractual life, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base. ~~The Province has not calculated a differential between the Province and the Financing Entity's borrowing costs, because of this policy decision.~~

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, resulting in higher interest costs. Having the rate-base pay is not a new policy, for example loans made by the Ontario Electricity Financing Corporation to OPG for capital investment purposes reflect the higher borrowing costs of the rate-base as opposed to that of the Province.

The $4 billion figure was sourced from the FAO's May 2017 report, ~~and a similar figure was never calculated by the Province.~~ and ~~However,~~ it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's annual report which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 2013) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is however silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the decision making process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan an accounting/ finance structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy;
- Ministry of Finance;
- Treasury Board Secretariat;
- Office of the Provincial Controller;
- Cabinet Office;
- Ontario Financial Authority (OFA);
- Independent Electricity System Operator (IESO); and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

Response prepared by TBS as Part of the Minister's Speaking Points

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman; Ronald Kwan; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 1:40:12 PM |
| **Attachments:** | QA_AG Report OFHP_Technical Briefing (OFA).docx |

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman ; Ronald Kwan ; Mike Manning ; Ken Kandeepan
**Subject:** FW: KMs and Q&As

Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred costs should be borne by the rate-base and not the tax-base.

Based on this policy decision, it was decided that the debt obligation would be recognized as a regulatory asset that would be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (i.e., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be noted that the FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

Commented [AS1]: Do we want to be so precise in these estimates? Or use the language from the government response "from almost $28 billion to less than $20 billion"

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2017 period; and

Commented [AS2]: ?

- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% down to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages an $18 billion nuclear fund and as an entity regulated by the Ontario Energy Board (OEB), OPG also has extensive experience with regulatory deferral and variance accounts.

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties (…) Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Based on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

~~Response prepared by MOF/ OFA as Part of the Minister's Speaking Points~~

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province. Why not have the Province borrow for the OFHP?**

The policy objective of OFHP is to smooth the cost to ratepayers over the useful life, not the contractual life, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base. ~~The Province has not calculated a differential between the Province and the Financing Entity's borrowing costs, because of this policy decision.~~

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, resulting in higher interest costs.

The $4 billion figure was sourced from the FAO's May 2017 report, and a similar figure was never calculated by the Province. However, it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's annual report which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 2013) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is however silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the decision making process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan an accounting/ finance structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy;
- Ministry of Finance;
- Treasury Board Secretariat;
- Office of the Provincial Controller;
- Cabinet Office;
- Ontario Financial Authority (OFA);
- Independent Electricity System Operator (IESO); and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

Response prepared by TBS as Part of the Minister's Speaking Points

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Sunday, October 15, 2017 12:57:36 PM |

Hi Anna,
Slide 4 seems to use 17-18 numbers that are full-year estimates.
The approved Ministry of Energy Estimates for 17-18, which are public at https://www.ontario.ca/page/expenditure-estimates-ministry-energy-2017-18#section-3, shows the amounts based on in-year implementation timelines. It would seem to make more sense to go with 17-18 numbers consistent with Estimates, unless Energy and TBS have a good rationale to do otherwise.
I believe the pro-rated numbers were also provided to the FAO when we were interacting with FAO staff prior to the FAO report in the spring.
On slides 5 and 9, should the last bullet be amended? I'm not sure "consulted with" is the right way to position the role of third party, external auditors (KPMG and E&Y). It might be better to have separate sentences or bullet for describing the role of the external auditors. Ken and OPCD may have a view on that.
On slide 8, the first bullet, I think the distinction between OPG and the financing entity should be maintained – "sold to a financing entity (e.g., a trust ) established by OPG…."
Ron

**From:** Anna Strathy
**Sent:** October-14-17 9:56 AM
**To:** Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Subject:** Fwd: KMs and Q&As

FYI deck for technical briefing attached, with input from IESO pending.
Q&As coming later today.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 13, 2017 at 8:00:41 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: RE: KMs and Q&As**
>
> Hi everyone,
> Attached is an updated deck based on a discussion with our MO this afternoon. This

version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
We've sent IESO the slide for feedback and input. The text that is currently on IESO's slide was from TBS. We will share a new version once we receive that input.
The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS.
For Monday morning's meeting we will use the technical deck and QAs.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 6:30 PM
**To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** Re: KMs and Q&As

Yes, we will share back the consolidated version once we have incorporated everything.
Thanks.
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,
Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.
Thanks
Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As

Thanks, Anna.
Allison how are we doing on TBS input?
Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Martin,

Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As. Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.

Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Attached is a first draft of the technical deck for review and input.

Sorry for the short turnaround but we will need this for the weekend.

Any status update on the QAs?

Thanks,

Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS)

<Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.

Thanks,

Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Ken Kandeepan; Gadi Mayman; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 5:23:29 PM |

---

Thanks Anna.
Ron

---

**From:** Anna Strathy
**Sent:** October-13-17 17:23
**To:** Ronald Kwan
**Cc:** Ken Kandeepan ; Gadi Mayman ; Mike Manning
**Subject:** Re: KMs and Q&As

I haven't seen the consolidated mark-up yet, but I'll forward momentarily what I submitted to Martin.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 13, 2017, at 5:13 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Thanks Anna.
> Would you have the final markup, or a revised version from MOF / Energy, following input from us and TBS?
> Ron
>
> ---
>
> **From:** Anna Strathy
> **Sent:** October-13-17 15:31
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: KMs and Q&As
> Thank you both, appreciate the comments.
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, October 13, 2017 3:22 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: KMs and Q&As
> Hi,
> I had a conflict and missed the call, so I can't speak to the inclusion or not of the OEFC financing point. However, if there is an OEFC financing point, would it be more appropriately stated that the old Ontario Hydro (and as continued as OEFC) was (and is)

charged a provincial Debt Guarantee Fee (of 50 bps) to reflect, in part, a financing cost differential and impact on the Province of supporting electricity sector borrowing for investments, which was a reasonable cost of capital for the electricity sector to carry? (And a small copy edit, if it is retained "Ontario Electricity *Financial* Corporation".)
Ron

---

**From:** Ken Kandeepan
**Sent:** October-13-17 14:11
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan

<Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,

Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.

Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.

Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM

**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**From:** Ronald Kwan
**To:** Anna Strathy; Ken Kandeepan
**Cc:** Gadi Mayman; Mike Manning
**Subject:** RE: KMs and Q&As
**Date:** Friday, October 13, 2017 5:13:46 PM

---

Thanks Anna.
Would you have the final markup, or a revised version from MOF / Energy, following input from us and TBS?
Ron

---

**From:** Anna Strathy
**Sent:** October-13-17 15:31
**To:** Ronald Kwan ; Ken Kandeepan
**Cc:** Gadi Mayman ; Mike Manning
**Subject:** RE: KMs and Q&As
Thank you both, appreciate the comments.

---

**From:** Ronald Kwan
**Sent:** Friday, October 13, 2017 3:22 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Hi,
I had a conflict and missed the call, so I can't speak to the inclusion or not of the OEFC financing point. However, if there is an OEFC financing point, would it be more appropriately stated that the old Ontario Hydro (and as continued as OEFC) was (and is) charged a provincial Debt Guarantee Fee (of 50 bps) to reflect, in part, a financing cost differential and impact on the Province of supporting electricity sector borrowing for investments, which was a reasonable cost of capital for the electricity sector to carry?
(And a small copy edit, if it is retained "Ontario Electricity *Financial* Corporation".)
Ron

---

**From:** Ken Kandeepan
**Sent:** October-13-17 14:11
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this

version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan |
| **Cc:** | Gadi Mayman; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 3:30:55 PM |

---

Thank you both, appreciate the comments.

**From:** Ronald Kwan
**Sent:** Friday, October 13, 2017 3:22 PM
**To:** Anna Strathy ; Ken Kandeepan
**Cc:** Gadi Mayman ; Mike Manning
**Subject:** RE: KMs and Q&As

Hi,
I had a conflict and missed the call, so I can't speak to the inclusion or not of the OEFC financing point. However, if there is an OEFC financing point, would it be more appropriately stated that the old Ontario Hydro (and as continued as OEFC) was (and is) charged a provincial Debt Guarantee Fee (of 50 bps) to reflect, in part, a financing cost differential and impact on the Province of supporting electricity sector borrowing for investments, which was a reasonable cost of capital for the electricity sector to carry?
(And a small copy edit, if it is retained "Ontario Electricity *Financial* Corporation".)
Ron

**From:** Ken Kandeepan
**Sent:** October-13-17 14:11
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Hi Anna

Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna

(OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As
Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As
Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**From:** Ronald Kwan
**To:** Anna Strathy; Ken Kandeepan
**Cc:** Gadi Mayman; Mike Manning
**Subject:** RE: KMs and Q&As
**Date:** Friday, October 13, 2017 3:21:36 PM

---

Hi,
I had a conflict and missed the call, so I can't speak to the inclusion or not of the OEFC financing point. However, if there is an OEFC financing point, would it be more appropriately stated that the old Ontario Hydro (and as continued as OEFC) was (and is) charged a provincial Debt Guarantee Fee (of 50 bps) to reflect, in part, a financing cost differential and impact on the Province of supporting electricity sector borrowing for investments, which was a reasonable cost of capital for the electricity sector to carry?
(And a small copy edit, if it is retained "Ontario Electricity *Financial* Corporation".)
Ron

---

**From:** Ken Kandeepan
**Sent:** October-13-17 14:11
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Ronald Kwan ; Mike Manning
**Subject:** RE: KMs and Q&As
Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.

Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,

Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.

Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.

Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 2:44:43 PM |
| **Attachments:** | QA_AG Report OFHP_Technical Briefing_Markup.docx |

Hi Anna,

Some suggested edits and comments.

Ron

**From:** Anna Strathy
**Sent:** October-13-17 14:13
**To:** Ken Kandeepan
**Cc:** Gadi Mayman ; Ronald Kwan ; Mike Manning
**Subject:** RE: KMs and Q&As

Right. I'll defer to you and Gadi on the OEFC point.

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:11 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Not really Anna but that may be only because it was very hard to follow all the comments on the phone.

Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Hi Anna

Pls see my one comment and edits.

Thanks

Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM

**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.

Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As

Good afternoon,

Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.

Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.

Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work

(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**Q& A Response – OAG's Report on Ontario's Fair Hydro Plan**

**Q. Why did the government introduce Ontario Fair Hydro Plan?**

The government has been making important investments in a cleaner and more reliable electricity system, but these investments have led to higher bills. Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable.

Ontario Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the province's history. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

In developing the policy to refinance the Global Adjustment (GA), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

GA refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

OFHP operates under a financial ~~and accounting~~ framework that is appropriate for the intended purpose and the accounting is in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Commented [RK1]:** Is this a more appropriate way to phrase this – OPCD should review.

**Q. The Auditor General and the Financial Accountability Office both suggest that the cost of borrowing will be more expensive than traditional government borrowing? Is this true?**

In the development of Ontario's Fair Hydro Plan, the government made the policy decision that deferred electricity system costs should be borne within the electricity system~~by the rate-base~~ and not by the tax-base.

Based on this policy decision, that ratepayers in the future, as beneficiaries of the electricity system assets being paid for, would pay the deferred electricity system costs over a longer period to reflect the expected life of the assets, ~~it was decided that~~ the ability to recover those costs in the future~~debt obligation~~ would be recognized as a regulatory asset, which ~~that~~ ~~wc~~ould be sold and securitized. This design appropriately aligns the costs and benefits within the group of eligible consumers.

Ontario Power Generation (OPG) was identified as the Financial Services Manager responsible for the financing plans and the financing entity (~~i.~~e.g., Fair Hydro Plan Trust) that will manage the debt obligations. OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

OPG has a demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

With respect to the $4 billion figure referenced by the Financial Accountability Office (FAO) in its May 2017, it should be note that FAO's report was based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Accumulated interest is projected to be considerably less than estimated in the FAO's May 2017 report. Peak debt for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion.

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total estimated cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Have the Ministry of Energy's estimates for "peak debt" and "total interest costs" related to Ontario's Fair Hydro Plan (OFHP) changed? I understand that the Office of the Audit General (OAG) has asked what are the factors that resulted in the changes in estimates from March 1 to August 31?**

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The revised estimates are the result of the following factors:

- The Independent Electricity System Operator (IESO) updated its long-term cost projections for the electricity system and residential bills;
- The Ontario Energy Board (OEB) provided "actual data" with respect to residential bills for the May 1, 2017 to April 30, 2017 period; and
- Based on expert third-party advice the interest rate assumptions for OFHP were updated (i.e., from 5% to 4.5%).

In addition, for the August 31, 2017 estimate, the Ministry converted debt and interest amounts from calendar year to Regulated Price Plan (RPP) periods.

**Q. In the development of Ontario's Fair Hydro Plan, did the government set up the financing structure intentionally to keep it off government books?**

No. Global Adjustment (GA) refinancing is designed so that deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

GA refinancing operates under a financial ~~and accounting~~ framework that is appropriate for the intended purpose and the accounting is in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

**Commented [RK2]:** March?

**Commented [RK3]:** Is this a more appropriate way to phrase this – OPCD should review.

**Q. Why is the government using Ontario Power Generation (OPG) as a borrowing agent for Ontario's Fair Hydro Act? Would it be easier to use a traditional government borrowing agent like the Ontario Financing Authority (OFA)?**

Ontario Power Generation (OPG) has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA).

OPG currently manages ~~an~~ $18 billion in segregated nuclear funds to manage nuclear liabilities, and, ~~a~~is an electricity sector entity regulated by the Ontario Energy Board (OEB)~~, OPG also has~~with extensive experience with regulatory deferral and variance accounts.

Commented [RK4]: 20?

OPG also has the breadth and demonstrated track record in the financial markets with its Corporate Debt platform, private placement of insurance linked bonds, participation in securitization program and highly successful project debt issuances tied to new hydroelectric developments. These financing initiatives have been well received by investors at a reasonable cost to OPG. The innovative, cost saving and precedent setting aspects of these structures have resulted in international recognition.

OPG has developed solid investor relationships and has a large investor base in the structured finance space that would be the target market for financing Ontario's Fair Hydro Plan initiative. For example, Lower Mattagami project financing attracted a broad investor base of ~80 institutional investors, including major investors in the Canadian power and utility bonds market.

In terms of administration, OPG is currently managing its own Corporate public debt program and three project financing programs totalling more than $2 billion and two commercial paper programs.

Finally, OPG's Treasury functions are well positioned given their management of existing multiple debt programs.

**Q. The Financial Accountability Office (FAO) suggested that using Ontario Power Generation as the borrowing agent will cost $4 billion more?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

The Ministry of Energy's estimates of peak debt for OFHP decreased between March 1, 2017 and August 31, 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The FAO report itself concludes by saying "the FAO's estimates are subject to many assumptions and uncertainties … Fiscal impact may differ significantly from the FAO's estimates."

In addition, a number of variables, including interest rates, electricity demand and electricity costs, will vary over the 30-year life of the program and cost estimates will continue to be revised to reflect these changing conditions. The total cost of the program has already been revised downwards substantially to reflect revised inputs.

The government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program. Further details will be released in the upcoming 2017 Long-Term Energy Plan.

**Q. Do you disagree with the FAO on financial costs?**

The $4 billion figure was an estimate made by the Financial Accountability Office (FAO) based on initial Ministry of Energy estimates from March 2017. Subsequent analysis conducted by the Ministry of Energy, refined a number of variables, including the cost of borrowing and electricity system cost forecasts.

Base on updated analysis, the total interest is projected to be considerably less than estimated in the FAO's May 2017 report. For example, peak debt for Global Adjustment (GA) refinancing has been revised down substantially since May 2017 from $27.7 billion to $18.5 billion. The Ministry estimates of total interest cost also decreased from $25.1 billion to $18.3 billion.

The Ministry of Energy's latest estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.

Response prepared by MOF/ OFA as Part of the Minister's Speaking Points

**Q. The OAG's report claims that consumers will pay an additional $4 billion in interest costs over the life of OFHP since OPG and its Financing Entity will pay a higher rate of interest compared to the Province.**

The policy objective of OFHP is to ~~smooth~~more fairly allocate the cost to ratepayers over the useful life, not the contractual ~~life~~term, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base. ~~The Province has not calculated a differential between the Province and the Financing Entity's borrowing costs, because of this policy decision.~~

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected~~resulting~~ in ~~higher~~different interest costs.

The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report, and ~~a similar figure~~ was n~~ever~~ot calculated by the Province. However, it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

**Q. Why did the IESO change its accounting practices?**

The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (i.e., amounts due from power distributors) and liabilities (i.e., amounts due to power producers) in their financial results.

This accounting change was accepted by IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in IESO's 2016 annual report, which was published online in March 2017.

The IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of IESO-administered markets at year-end.

**Commented [RK5]:** While this may be the case, and good to note to the Minister, I don't see this as a good point for a public Q&A.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with IESO on January 1, 201~~3~~5) in its financial statements.

Additionally this accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

This change has no impact to the province's annual deficit, net debt, accumulated deficit or on the ratepayers of Ontario.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

**Q. Why did the government not use the Canadian Public Sector Accounting Standards (PSAS)? How was Ontario's Fair Hydro Plan (OFHP) financing structure determined?**

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. Presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS is, however, silent on the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the ~~only~~ accounting framework in North America that provides the most developed guidance on rate regulated operations.

**Commented [RK6]:** Seems more consistent to the final Q&A below to add this.

This financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets. It ensures the impact of the plan will be transparent. Under this system, credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific.

**Q. What is the Global Adjustment (GA)?**

The Global Adjustment (GA) is a mechanism that recovers certain electricity system costs, such as capital costs incurred by generators. The GA is calculated by the Independent Electricity System Operator (IESO) based on the difference between the market price for electricity, which represents the marginal cost of electricity production, and rates paid to regulated and contracted generators to ensure they can recover their fixed costs. It also accounts for costs associated with running conservation programs in the province.

GA has been an important factor in providing stable prices while ensuring that sufficient generating capacity is in place to deliver a reliable supply of electricity.

GA pays for the bulk of the recent investments in the electricity system. The majority of the province's electricity generators operate under 20-year contracts. Third-party experts have confirmed that many of these generators will be able to continue to operate beyond the end of their contract. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets.

Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

**Q. Some say you are unfairly placing the burden of debt on future generations through things like Ontario's Fair Hydro Plan, how do you respond?**

Future generations will be paying their fair share for a system they will be benefiting from in their lifetime. Not only will they benefit from a reliable electricity system, but from the cleaner air from the reduction of coal-fired generation.

Ontario's Fair Hydro Plan acts much like taking out a new mortgage – providing much-needed relief now by spreading costs across the life of our assets. Current ratepayers are paying less now, and future ratepayers will in turn help to pay for their fair share of the significant investments that we've made to build a clean and reliable electricity system. This more fairly shares the cost of our investments across the generations of electricity ratepayers who will benefit from them.

Moving forward, Ontario is developing its 2017 Long-Term Energy Plan (2017 LTEP) which will focus on continuing to put downward pressure on electricity bills over the long term. Our robust electricity supply puts us in a good position to improve efficiency, increase transparency and enhance opportunities for innovation and competition to further reduce system costs. That is why Ontario's Fair Hydro Plan includes a commitment to improving sector efficiency and modernizing Ontario's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

For example, IESO's Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The initiative is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

**Q. Who was involved in the ~~decision making~~policy and implementation process to meet the mandate?**

Senior officials and staff from several departments and agencies, led by the Ministry of Energy, collaborated to plan a~~n accounting/ finance~~ structure, identify risks, make decisions and take other actions to meet the mandate.

The senior officials and staff were from:

- Ministry of Energy~~,~~;
- Ministry of Finance~~,~~;
- Treasury Board Secretariat~~,~~;
- Office of the Provincial Controller~~,~~;
- Cabinet Office~~,~~;
- Ontario Financi~~al~~ng Authority (OFA)~~,~~;
- Independent Electricity System Operator (IESO)~~;~~, and
- Ontario Power Generation Inc. (OPG).

In development and implementation of Global Adjustment (GA) refinancing, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

**Commented [RK7]:** Note to Draft: This is a component of TBS, of course.

Response prepared by TBS as Part of the Minister's Speaking Points

**Q. How do you respond to the Auditor General's claim that the government ignored warnings regarding a potential adverse audit opinion of Ontario's public accounts?**

The government's financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS), and will continue to follow these standards for the transactions resulting from Ontario's Fair Hydro Plan (OFHP) in 2017-18 and in future years.

In regards to rate-regulated accounting, PSAS are silent on the use of regulated accounting:

- PSAS acknowledges that it does not provide guidance on all possible transactions and notes that it is necessary to refer to other sources of guidance that are consistent with the PSAS framework; and
- US GAAP, with the most developed guidance on rate-regulated accounting, is the appropriate guidance to reference.

Many entities in Canada, including OPG and Hydro One use rate-regulated accounting:

- The OAG can refer to the CPA Canada research study that was shared.
- Rate-regulated accounting is well understood in the electricity sector.

IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO.

In the development of OFHP, the government consulted with several third party advisors in the application of accounting standards. This is normal course of business governments take for complex transactions.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan |
| **Cc:** | Gadi Mayman; Ronald Kwan; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 2:12:46 PM |

---

Right. I'll defer to you and Gadi on the OEFC point.

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:11 PM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Ronald Kwan ; Mike Manning
**Subject:** RE: KMs and Q&As

Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As

Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

**Subject:** FW: KMs and Q&As

Good afternoon,

Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.

Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.

Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all

components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Ronald Kwan; Mike Manning |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Friday, October 13, 2017 2:10:46 PM |

---

Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan
**Cc:** Gadi Mayman ; Ronald Kwan ; Mike Manning
**Subject:** RE: KMs and Q&As
Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As
Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other

questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As
Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)

**Subject:** KMs and Q&As

Hi guys,

In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.

I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.

-ENE: financing and policy intent

-OFA: financing

-TBS: accounting

Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.

Thanks,

Dave

Sent with BlackBerry Work
(www.blackberry.com)

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: KMs and Q&As |
| **Date:** | Monday, October 16, 2017 2:21:53 PM |
| **Attachments:** | TBS FHP QAs 20171013 (2)_OPCD clean_CEFD-Markup2.docx |

Hi Anna,

A slightly revised response to Q25, as attached.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 08:30
**To:** Ronald Kwan
**Cc:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Subject:** Re: KMs and Q&As

Thanks Ron. And thank you for catching the question that required OFA input.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 16, 2017, at 12:55 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
>
> And some suggestions on the TBS set of Qs&As too.
>
> Ron
>
> **From:** Anna Strathy
> **Sent:** October-15-17 7:40 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Re: KMs and Q&As
>
> Thanks Ron. I'm expecting that we'll have an opportunity to provide input after the 8am meeting tomorrow. I'll make sure that your comments are passed on.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Oct 15, 2017, at 12:57 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Anna,
> >
> > Slide 4 seems to use 17-18 numbers that are full-year estimates.
> >
> > The approved Ministry of Energy Estimates for 17-18, which are public at

https://www.ontario.ca/page/expenditure-estimates-ministry-energy-2017-18#section-3, shows the amounts based on in-year implementation timelines. It would seem to make more sense to go with 17-18 numbers consistent with Estimates, unless Energy and TBS have a good rationale to do otherwise.
I believe the pro-rated numbers were also provided to the FAO when we were interacting with FAO staff prior to the FAO report in the spring.
On slides 5 and 9, should the last bullet be amended? I'm not sure "consulted with" is the right way to position the role of third party, external auditors (KPMG and E&Y). It might be better to have separate sentences or bullet for describing the role of the external auditors. Ken and OPCD may have a view on that.
On slide 8, the first bullet, I think the distinction between OPG and the financing entity should be maintained – "sold to a financing entity (e.g., a trust ) established by OPG…."
Ron

---

**From:** Anna Strathy
**Sent:** October-14-17 9:56 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: KMs and Q&As

FYI deck for technical briefing attached, with input from IESO pending.
Q&As coming later today.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 13, 2017 at 8:00:41 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: RE: KMs and Q&As**

Hi everyone,
Attached is an updated deck based on a discussion with our MO this afternoon. This version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
We've sent IESO the slide for feedback and input. The text that is currently on IESO's slide was from TBS. We will share a new version once we receive that input.
The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS. For Monday morning's meeting we will use the technical deck and QAs.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 6:30 PM
**To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** Re: KMs and Q&As

Yes, we will share back the consolidated version once we have incorporated everything.
Thanks.
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,
Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.

Thanks
Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As

Thanks, Anna.
Allison how are we doing on TBS input?
Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Martin,
Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.
Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.
Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
Attached is a first draft of the technical deck for review and input.
Sorry for the short turnaround but we will need this for the weekend.

Any status update on the QAs?
Thanks,
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As

Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY)

<Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

# Ontario's Fair Hydro Plan

## QUESTIONS & ANSWERS

*TBS*

### Key Messages

- The government respects independent officers of the legislature, and values the important perspective they bring but does not agree with the assertions and conclusions expressed in the Auditor General's Fair Hydro Plan report.

- The government has a strong track record of producing high-quality financial reports on a timely basis and continues to present the province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards.

- In developing the Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

- The Fair Hydro Plan operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards and ensures the goals underlying the program are achieved in a cost-effective manner.

- The implementation of Ontario's Fair Hydro Plan is ongoing, with significant decisions with accounting and financial implications still being finalized. The financing plan and its impact will continue to be transparent and fully available to credit rating agencies, securities regulators, and the public.

- The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General in providing its independent views to the Legislative Assembly.

DRAFT

## Top Questions

1. **The Auditor General says that the accounting structure for Ontario's Fair Hydro Plan is not transparent, has poor value for money, and is not in accordance with Public Sector Accounting Standards. How do you respond?**

   The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

   The Ministry of Energy, the Ministry of Finance, and the Treasury Board Secretariat remain committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

   With regards to the Auditor General's report on Ontario's Fair Hydro Plan (OFHP) – while the government does not agree with the assertions and conclusions expressed in the report, the government thanks the Office of the Auditor General for its report.

   OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results is transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

DRAFT

The Ministry of Energy would welcome further questions about OFHP and the government's investments in a reliable energy system.

2. **The Auditor General makes two recommendations in her report – to record the true financial impact of Ontario's Fair Hydro Plan; and to use a financing structure that is the least costly for Ontarians. Will you adopt these recommendations?**

   The government does not agree with the assertions and conclusions expressed in the report.

   In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

   The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

   As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis, and will continue to move forward and present the Province's finances fairly, accurately and in accordance with PSAS.

   On the point of "a financing structure that is the least costly for Ontarians": Program area to develop a stronger argument for this point.

   The OFHP financing structure has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

**Commented [HS(1]:** OFA

**Commented [RK2R1]:** Would it be appropriate to insert the response from the other set of Qs&As, as below?

The policy objective of OFHP is to more fairly allocate the cost to ratepayers over the useful life, not the contractual term, of the electricity generating assets. Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base.

We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected in different interest costs. Having the rate-base pay is not a new policy, for example Hydro One has borrowed in the capital markets since the early 2000s.

The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report and is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher and interest costs were forecast to be higher than current projections.

Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Office (FAO).

Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

The Province will continue to prepare its consolidated financial statements in accordance with PSAS and continue to build on a track record of responsible fiscal management.

3. **Both the Auditor General and the Financial Accountability Officer have raised serious concerns about the accounting treatment of the electricity cost refinancing initiative. Why should Ontarians believe this government over two independent officers of the Legislature?**

The government has the utmost respect for all independent officers of the legislature, and values the important perspective they bring.

Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history.

In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with PSAS and continue to build on its track record of responsible fiscal management.

4. **The Auditor General says that you are "obfuscating" the true financial impact of Ontario's Fair Hydro Plan through a "needlessly complex" accounting structure. How do you respond?**

   Ontario's Fair Hydro Plan (OFHP) is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

   OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   OFHP is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   While the implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized, the financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

   Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

5. **Why do you keep differentiating between ratepayers and taxpayers? At the end of the day, the cost of Ontario's Fair Hydro Plan is being borne by Ontarians now and in the future.**

   Ontario's Fair Hydro Plan (OFHP) operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

   The framework has been designed to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs.

Need more information from program area re: rationale in differentiating between ratepayers and taxpayers.

Commented [HS(3]: energy

6. **How can you justify the $4 billion in additional interest expenses that will be borne by ratepayers because of the way the government has structured electricity cost refinancing (i.e. using Ontario Power Generation to finance 55 per cent, at a higher interest rate than the Province, instead of the Province financing the entire electricity cost financing)?**

   Ontario's Fair Hydro Plan (OFHP) is comprised of a series of policy decisions. The impact of some of these decisions will be borne by the Province (taxpayers) where appropriate, such as sales tax relief and shifting social programs to the tax base; some will be borne by ratepayers, such as spreading the investment costs and benefits across ratepayers more fairly.

   The accounting will reflect the economic substance of the transactions in accordance with Public Sector Accounting Standards (PSAS) and will differentiate those costs of OFHP borne by taxpayers versus those borne by ratepayers.

   The Auditor General's report suggests that all the costs of OFHP should be reflected as if they will be borne by taxpayers, which is inaccurate.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the program is complete, accumulated interest is projected to be considerably less than the estimates in the May 2017 report of the Financial Accountability Officer (FAO).

   Total borrowing estimates over the thirty year life of OFHP have been revised down substantially by the government since the FAO released its report in May 2017, and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

   For further questions about borrowing estimates, please contact the Ministry of Finance.

7. **The AG claims that when the government first gave Ontarians an 8 per cent break on their bills, it was reported on the books properly. She says when it jumped to 25 per cent, the accounting changed. Isn't it obvious you're cooking the books to suit your needs?**

   - *Need information from program area*

8. **The Auditor General said that a similar move to legislate accounting to defer costs was proposed with the restructuring of the Ontario electricity sector in the late 1990s, but the Auditor General's opinion at that time was that this would represent a departure from a central tenet of generally accepted accounting principles. The government at that time heard these concerns, and made the decision to not create an asset for future anticipated ratepayer payments. Why does the government think this is ok now?**

   The Auditor General's report makes a comparison between Ontario's Fair Hydro Plan (OFHP) and the Ontario Electricity Financial Corporation (OEFC) stranded debt. There are, however, crucial differences between the two.

   For example, the OEFC stranded debt had already been incurred when the restructuring took place.

   In the case of OFHP, the difference between what will be collected and what will be paid to generators is considered to be an asset in accordance with the accounting definition, as it will generate a specific future revenue stream in the form of the CEA.

   It is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and the 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer is a normal rate-setting regulatory practice.

   The Debt Retirement Charge (DRC) represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred).

   The OFHP Global Adjustment deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (versus the contract lengths that may be shorter than the expected useful life of the assets).

   The difference between the 1999 restructuring and OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under OFHP, an asset is being recorded to reflect a fair allocation of electricity costs between current and future ratepayers.

   The intention of OFHP is to be forward-looking, to ensure that ratepayers are sharing current and future costs, whereas the DRC was backward-looking,

**Commented [RK4]:** Another crucial difference is the context of the broader electricity sector structure then and now.

In 1999, the sector was broadly being set up as being market and competitive-based, and OEFC was not rate-regulated, and the DRC was put in place in that context, as unbundled.

Today, the sector is broadly speaking essentially fully-regulated or contracted, and the FHP GA deferral structure fits within that context.

DRAFT

replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.

9. **What will happen if interest rates rise? The Financial Accountability Officer (FAO) estimates that if interest rates were to rise, the true cost of Ontario's Fair Hydro Plan could be between $69 and $93 billion. How can you justify shifting this heavy burden onto future generations?**

   The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

   Ontario Power Generation (OPG) is beginning the process of raising funds to finance the deferred costs of Ontario's Fair Hydro Plan (OFHP), and while total borrowing costs will not be known until the program is complete, accumulated interest is expected to be considerably less than the estimates cited in the May 2017 report of the Financial Accountability Office (FAO).

   Total borrowing estimates over the thirty year life of Ontario's Fair Hydro Plan (OFHP) have been revised down substantially by the government since the Financial Accountability Office (FAO) released its report, and borrowing costs are now forecast to be substantially lower than original estimates.

   Current government estimates forecast that the peak debt over the thirty year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

**Commented [RK5]:** Just an aside. The Q seems to be more about the risk and cost of interest rates rising generally, versus what may be more a response on a lower interest rate now based on a lower estimated spread at a point in time.

## Government Officials

10. **The Auditor General says that even your own government officials flagged the unnecessarily high costs of Ontario's Fair Hydro Plan – and yet you chose to proceed. How can you justify this?**

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    Multiple options were considered in creating the OFHP framework – such as to have local distribution ~~centres~~ companies finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some local distribution ~~centres~~ companies to finance the balances.

    The implementation of OFHP is ongoing, with significant decisions with accounting and financial implications still being finalized.

Ultimately, OFHP operates under a financial and accounting framework that is appropriate for the intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

## Audit Opinion

**11. The government just received another qualified audit opinion on its Public Accounts – this time based on two separate issues. Why do you continue to disagree with the Auditor General?**

The government continues to move forward and present the Province's finances fairly and accurately and in accordance with Canadian Public Sector Accounting Standards (PSAS). Ontario has a strong track record of producing high-quality financial reports on a timely basis. The Auditor General's qualified opinion is based on a different interpretation of PSAS for net pension assets and recognition of market accounts.

Last year there was a disagreement among the Province's professional accounting staff and the Auditor General's Office on the appropriate application of PSAS regarding pension accounting. As a result, the Pension Asset Expert Advisory Panel was established to deliver independent advice and recommendations on the issue to the Province.

The independent panel members concluded the Province's share of the net pension assets of both the Ontario Teachers' Pension Plan and the Ontario Public Service Employees' Union Pension Plan should be recognized in Ontario's financial statements.

After significant deliberation, including consideration of the recommendations of the panel, Ontario confirmed that the accounting for these plans prior to 2015-16 was appropriate, and are prepared in accordance with public sector accounting standards for pension asset accounting. Further, EY provided additional analysis and concluded that no valuation allowance was required for either plan as of March 31, 2017. The 2016-17 financial statements include these pension assets, and we continue to apply the accounting treatment of pension assets that the Province has used consistently since 2001. In addition, the 2015-16 financial statements were restated to include these assets.

This year the Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects the financial position of the IESO-administered markets at year-end. This change was supported by the IESO's audit committee, its independent external auditor, and finally by the Office of the Provincial Controller. This change

also has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

**12. The Auditor General says that you anticipated the government would receive a qualified audit opinion – and accepted this risk. In the private sector this would be unacceptable. How do you figure you can get away with this?**

The Province's financial statements are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

DRAFT

**13. Are you concerned that the Auditor General will issue an adverse opinion on the Province's Public Accounts due to Ontario's Fair Hydro Plan accounting? What would be the impact on the Province's credit rating?**

It would be inappropriate to speculate about how the Auditor General may issue an opinion for Public Accounts next year. The implementation of Ontario's Fair Hydro Plan (OFHP) is ongoing, with significant decisions with accounting and financial implications still being finalized.

The Ministry of Energy, Finance, and the Treasury Board Secretariat continue to work closely with Ontario Power Generation (OPG), the Independent Electricity System Operator (IESO), as well as third-party experts to ensure due diligence.

The Province's financial statements are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18, and in following years.

The financing plan for OFHP and its impact will be transparent. Credit rating agencies, securities regulators, and the public will see full information and full reporting of the impacts of OFHP.

Ontario has a strong track record of producing high-quality financial reports on a timely basis. Ontario will continue to move forward and present the Province's finances fairly and accurately and in accordance with PSAS.

**14. The Auditor General says that she has consulted with all of the Auditor Generals in Canada – and they agree with her assessments. How are we supposed to believe this government when all independent auditors in the country say you are wrong?**

In developing Ontario's Fair Hydro Plan, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

PSAS are principle based -- they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

DRAFT

All Chartered Professional Accountants (CPAs), including those employed by the Ontario Public Service (OPS), are required to comply with the Code of Professional Conduct for CPAs. One of those rules is that they not be associated with false or misleading information.

That means that if the professional accountants in the OPS do not agree with the judgment of the Ontario Auditor General, it is not as simple as just agreeing to accept the interpretation of the Office of the Auditor General if they believe that interpretation would result in false or misleading financial statements. While we expect professional accountants to agree on the vast majority of issues, we acknowledge that they may not agree on everything and when that occurs, and the difference is material to the financial statements, the Office of the Auditor General can choose to issue a qualified audit opinion.

15. **Are you going to hire an expert advisory panel, as you did on the pension asset accounting matter, to settle this dispute with the Auditor General? If so, what authority would this panel have?**

    There are no plans to establish a panel at this time.

    In developing Ontario's Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

    The Province will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

## Independent Electricity System Operator (IESO)

16. **The Auditor General was critical of the Independent Electricity System Operator's accounting changes, which formed part of her basis for a qualified opinion in the 2016-17 Public Accounts. Are these accounting changes inappropriate?**

    *On recognizing market accounts' assets:*

    The Independent Electricity System Operator (IESO) began recognizing its market accounts' assets (amounts due from power distributors) and liabilities (amounts due to power producers) in its financial results. IESO has chosen to recognize these markets accounts on its books for transparency reasons, as it better reflects its net financial position on behalf of the IESO-administered markets at year-end.

This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

Further, this accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.

This change has no impact to the Province's annual deficit, net debt or accumulated deficit.

This accounting change has been supported by the professional accounting staff of the Office of the Provincial Controller.

We will continue to work with the Auditor General to build on the government's track record of responsible fiscal management and high quality financial reporting.

*On rate-regulated accounting:*

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

## Rate-regulated Accounting

**17. Why use rate-regulated accounting? What is its benefit?**

In certain circumstances, an organization may be required to incur a large expenditure that will be recovered from ratepayers in the future.

For example, damage caused by an ice storm that results in extraordinary costs to restore a disruption of electricity services for customers. Such costs are subject to application and approval for recovery by the regulator over a specific time period.

DRAFT

What rate-regulated accounting does is it allows organizations to recognize those costs, which can be significant within a year but will generate benefits over time, to be matched over the same period that the amounts are recovered from ratepayers.

**18. The Auditor General says that the Independent Electricity System Operator's decision to adopt rate-regulated accounting was a deviation from Public Sector Accounting Standards, and cautioned against its use in her Independent Auditor's Report. Why was this change made and was it appropriate?**

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

Paragraph 11 of the *Introduction to Public Sector Accounting Standards* ("Introduction") states: "When applying the CPA Canadian Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles (GAAP), Section PS 1150."

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

The IESO made the decision to adopt rate-regulated accounting because it better reflects the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The IESO, like Hydro One and Ontario Power Generation (OPG), is regulated by the Ontario Energy Board. The IESO adopted rate-regulated accounting for its year ended December 31, 2016.
This accounting change was accepted by the IESO's independent external auditor, which issued an unqualified, or "clean," audit opinion. These accounting changes were highlighted in the IESO's annual report which was published online in March 2017.

It is worth noting that currently 8 out of 9 electricity system operators in North American markets employ accounting for rate-regulated assets, including the IESO.

**19. The Auditor General says that the use of rate-regulated accounting is inappropriate for the Independent Electricity System Operator and the Ontario Energy Board according to U.S. Generally Accepted Accounting Principles. How do you respond?**

In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the Auditor General's report makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must an independent regulator." This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

> *"The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers"*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically to not preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent (FAS 71, par. 64).

In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One – both of which are regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

*IESO Response:*

Canadian Public Sector Accounting Standards (PSAS) are effectively silent on this issue – they neither explicitly permit, nor prohibit, the recognition, measurement, presentation, or disclosure of rate-regulated activities.

In the absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards.

In this case, the Independent Electricity System Operator (IESO) consulted U.S. Generally Accepted Accounting Principles (GAAP), the appropriate accounting framework in North America that provides guidance on rate-regulated operations.

## Legislated Accounting

**20. The Auditor General says that you are essentially making up your own accounting rules. How are Ontarians supposed to believe things like a "balanced budget" when you keep changing the rules?**



DRAFT

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The OFHP operates under a financial and accounting framework that is appropriate for its intended purpose. It is in accordance with Public Sector Accounting Standards (PSAS) and ensures the goals underlying the program are achieved in a cost-effective manner.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS). The recording of any asset resulting from transactions of OFHP will be assessed for recognition and measurement based on PSAS, and where appropriate, other accounting guidance where PSAS is silent on the issue.

**21. The Auditor General says that the Province legislated accounting through the Ontario Fair Hydro Plan Act, which is not allowed according to Public Sector Accounting Standards. Is this true?**

The *Ontario Fair Hydro Plan Act, 2017* and its related regulations **do not** create accounting rules or legislate the accounting. This is a fundamental disagreement the government has with the Auditor General's report.

The Province, as always, will prepare its consolidated financial statements in accordance with Public Sector Accounting Standards (PSAS).

As PSAS is set by an independent standard-setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

PSAS are principle based – they are not a set of specific prescriptive rules. Applying them requires the application of professional judgment.

Our professional staff exercises judgment in applying the standards and as necessary consult with external experts and advisors. They provide the Office of the Auditor General with their written analysis on all significant issues that impact the financial statements for the year being audited, and they discuss the issues with the Office of the Auditor General.

The role of the Ontario Energy Board (OEB) and its mandate is provided in legislation. It is not uncommon for government policy, through regulations, to provide the ground rules over which the OEB is to preside.

This is the case with Ontario's Fair Hydro Plan (OFHP) itself, as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review, and make conclusion on submissions brought forward.

## Relationship with the Office of the Auditor General

**22. The Auditor General alleges the government withheld information from her on the accounting treatment for Ontario's Fair Hydro Plan. Why would she say that?**

The government is committed to assisting the Office of the Auditor General so that it can provide its independent views to the Legislative Assembly.

The implementation of Ontario's Fair Hydro Plan is ongoing, with significant accounting and financial decisions still being finalized.

Senior ministry officials have met and continue to work with the Office of the Auditor General by participating in interviews and providing documentation.

*If pressed:*

The Auditor General was informed throughout the course of this process. Program area to add details (i.e. number of meetings, documents, etc.)

*If asked about the Ministry of Energy emails:*

The Ministry of Energy, Finance, and the Treasury Board Secretariat are committed to assisting the Auditor General. For questions related to the Ministry of Energy, please contact them directly.

## Future Governments

**23. The Auditor General says that you are essentially handcuffing future governments with your financing structure. Why should future governments have to pay for your decisions?**

By responsibly managing the Province's finances, Ontario balanced the budget in 2017-18, and will maintain a balanced budget for the future.

With a growing economy and a balanced budget, this is the time to make investments in key services that matter most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

Over the last decade, ~~the~~ government policies ha~~ve~~s supported rebuildin~~g our~~the electricity transmission and distribution grid, invested in clean generation,

**Commented [RK6]:** Suggested rewording here and below, as these investments were not all made by the government itself or by its agencies.

and closed the last coal-fired power plant. Prices have increased because our electricity system is being transformed – ~~more than~~nearly $~~5~~70 billion has been invested to modernize the system.

Commented [RK7]: To reflect the change in the basis of this number, as per Energy Qs&As, to include MEU investments in the distribution grid.

The government heard from people across the ~~P~~province that the price of electricity had risen too quickly, which is why Ontario's Fair Hydro Plan (OFHP) will ensure costs are shared more fairly over the years ahead.

~~As~~ The Ontario electricity sector invested in renewing ~~our~~the provincial electricity system, ~~the government invested~~ including many new generating facilities, most of which operate under 20-year contracts. Some of these generating facilities~~ors~~ are expected to provide value to the electricity system beyond their contract lives. There is an opportunity to recognize the long-term benefit of these assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

To relieve the current burden on ratepayers and share costs more fairly, a portion of the Global Adjustment (GA) is being refinanced. Refinancing the GA is providing significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

In the early years, a portion of the costs covered by the GA is being refinanced to reduce pressure on today's electricity ratepayers. In later years, the cost of refinancing will be recovered from ratepayers.

OFHP is delivering the single-largest reduction in electricity rates in the Province's history. In developing OFHP, the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.

OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and ensures the goals underlying the program are achieved in a cost-effective manner.

The government recognizes that a fiscally sound approach to managing the Province's finances will provide the foundation for the long-term well-being and prosperity of Ontarians, and protect the public services that Ontarians rely on.

For further questions related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

**24. Q re: Loss of Public Trust**

## Asset Sales

**25. Will you buy back Hydro One so that it is back under public control?**

Maximizing the value of designated assets is part of the government's economic plan for Ontario. The net revenue gains from these transactions are helping the government to deliver on its plan by investing in infrastructure.

The *Trillium Trust Act, 2014*, provides for the dedication to the Trillium Trust of net revenue gains associated with the sale of designated assets to support investments in transit, transportation and other priority infrastructure across the province.

The Province has also committed to using the cash amount of the proceeds related to the book value of the Hydro One shares sold to pay down the Province's electricity sector debt and other payables, helping to reduce the debt of the Ontario Electricity Financial Corporation ("OEFC"), which manages and pays down the debt and other liabilities of the former Ontario Hydro.

The government is meeting its target to generate $4 billion in net revenue gains to be invested in transit and infrastructure, along with $5 billion to reduce debt, from broadening Hydro One's ownership.

The government has completed its final public offering of Hydro One shares and will remain, by law, the largest single shareholder in Hydro One. The Province is prohibited by law from selling down its ownership to less than 40 per cent of the voting securities in Hydro One, and no other single shareholder or group of shareholders working in concert is permitted to hold more than 10 per cent of the company's shares.

[For questions related to the Province's asset ~~sales~~optimisation initiative ~~planning~~, please direct your questions to the Ministry of Finance.]

**26. What else will you sell just so that you can "balance the budget"?**

The government has restored balance through targeted, measured and fiscally responsible decisions — managing growth in program spending and fostering job creation and economic growth.

A balanced budget also gives the government the fiscal flexibility to do more to help people. This is the time to make investments in key services that matter

**Formatted:** Font: Italic

**Commented [RK8]:** Suggest discouraging this kind of response. Other parts of this Q&A set typically provide at least a top line, active response on the government's policies, such as those on the electricity sector, including the FHP. It would be better not to have an immediate redirect here.

DRAFT

most to people, like health care and education, while at the same time lowering costs for necessities like electricity and child care.

The government is committed to dedicate net revenue gains from the sale of designated assets to the Trillium Trust, which is helping to fund transit, transportation and other key infrastructure projects across Ontario.

[For any questions related to the Province's asset optimisation initiative ~~sales planning~~, please direct your questions to the Ministry of Finance.]

**Commented [RK9]:** Preference would be to omit this altogether. The preceding paragraph is a better response.

## Government Advertising

**27. How can you justify spending $5.5 million on self-congratulatory advertising for Ontario's Fair Hydro Plan?**

The government continues to communicate useful, factual information to the public while maintaining Ontario's status as a national and international leader in government advertising oversight.

Ontario is the first and only jurisdiction in Canada to have legislation that bans government-paid partisan advertising in newspapers, magazines, billboards, radio, and television.

Ontario needs government advertising that is appropriate, reasonable and effective because the public has a right to know how public money is being spent, and why the government is bringing forward important policy changes.

At this time, I would like to clarify that the Treasury Board Secretariat is *not* responsible for individual line ministry advertising campaigns, and does not determine how much funding is allocated to any campaign.

For further questions about specific advertisements or advertising campaigns related to Ontario's Fair Hydro Plan, please contact the Ministry of Energy.

***28. Placeholder: Q regarding Advertising Standards Council***

## Executive Compensation

**29. How can you justify the exorbitant salaries paid to Hydro One executives when families are struggling to pay their hydro bills?**

The government remains committed to ensuring transparency and accountability in how broader public sector employers manage executive compensation.



DRAFT

However, Hydro One is now a publicly traded company, and decisions regarding compensation are not made directly by the government.

For further questions about executive compensation and oversight of specific organizations, please contact the Ministry responsible.

DRAFT

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Ronald Kwan; Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning |
| **Subject:** | RE: MO fact check |
| **Date:** | Tuesday, October 17, 2017 11:30:21 AM |
| **Attachments:** | Has electricity sector debt always been a ratepayer obligation.docx |

Hi
Pls see my edits for your consideration, in the attached document, using track changes.
Thanks
Ken k

**From:** Ronald Kwan
**Sent:** Tuesday, October 17, 2017 10:59 AM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Ken Kandeepan ; Mike Manning
**Subject:** Fwd: MO fact check
Hi Anna,
FYI. Energy asked us to review a Q&A, which we reviewed and revised somewhat as below. It was a short turn-around requested by Hilary, but perhaps we could send additional edits.
Ron

Begin forwarded message:

> **From:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Date:** October 17, 2017 at 10:52:08 AM EDT
> **To:** "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject: Fwd: MO fact check**
>
> Hi,
> How about this?
> Ron
>
> **Q and A – Electricity Sector Debt**
>
> **Q. Has electricity sector debt always been a ratepayer obligation?**
>
> The debt associated with the former Ontario Hydro is managed by its legal continuation, the Ontario Electricity Financial Corporation ("OEFC"), which is an agency of the Ministry of Finance. The OEFC is not an Ontario Energy Board regulated entity. OEFC is consolidated into the Province's Public Accounts, including its debt and other liabilities, assets, as well as its revenues and expenses, including the debt retirement charge (DRC) and interest expenses.

Prior to its restructuring, the debt of the former Ontario Hydro was also fully guaranteed by the Province.

While the former Ontario Hydro, as a rate-regulated entity, was able to service and pay down its debt and other liabilities from the electricity sector, on April 1, 1999, the former Ontario Hydro was restructured. As of that date, the Ministry of Finance determined that the estimated value of the assets of the former Ontario Hydro in a commercial and competitive electricity sector, was $17.2 billion, which was exceeded by total debt and other liabilities of $38.1 billion. The resulting shortfall of $20.9 billion was determined by the Ministry of Finance to be “stranded debt.”

To allow OEFC to service and retire $38.1 billion in total debt including the $20.9 billion in stranded debt, the Province established a long-term plan where debt service and repayment would be through dedicated revenues from the electricity-sector. This would be broken down for the electricity sector as follows:

- Notes receivable from the Province, OPG, Hydro One and IESO;
- Payments in lieu of taxes (PILs), which are equivalent to the corporate taxes and property taxes paid by private sector corporations, paid by OPG and municipal electricity utilities (**note**: subsequent to the Hydro One IPO, Hydro One no longer pays PIL of corporate income tax to OEFC. Provincial corporate taxes payable by Hydro One Inc. are due and payable by the Province to OEFC);
- DRC paid by electricity consumers; and
- The cumulative combined profits of OPG and Hydro One in excess of the government’s annual interest cost (initially $520 million annually) of its investments in the two companies.

As of April 1, 1999, the present value of the PILs and the cumulative combined profits of OPG and Hydro One in excess of the government’s $520 million annual interest cost of its investments in the two companies was estimated at $13.1 billion. As a result, subtracting the $13.1 billion from the stranded debt of $20.9 billion resulted in an initial estimate of $7.8 billion, for the residual stranded debt. As the amounts of PILs and profits is subject to actual results and uncertainty of future financial performance of the companies and future tax rates, the Electricity Act provided for the residual stranded debt to be determined from time to time.

Legislation provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.

The DRC has since been ended for residential users as of January

1, 2016, and the government has amended the Electricity Act to provide certainty to all other electricity users to end the DRC as of April 1, 2018.

**From:** "Cox, Hilary (ENERGY)" <Hilary.Cox@ontario.ca>
**Date:** October 17, 2017 at 9:48:32 AM EDT
**To:** "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
**Subject: FW: MO fact check**

Hi Ron –
Our MO has asked for a QA on whether electricity debt has always resided in the electricity system or if it's ever been within the tax base. Staff have prepared the attached to respond to that request. Please review/fact check and send back to me ASAP for use today.
Hilary

**Hilary Cox**
Executive Assistant/Sr. Policy Advisor (A) |
Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |
E: Hilary.cox@ontario.ca

**. Has electricity sector debt always been a ratepayer obligation?**

The debt associated with the former Ontario Hydro is managed by its legal continuation, the Ontario Electricity Financial Corporation ("OEFC"), which is an agency of the Ministry of Finance. The OEFC is not an Ontario Energy Board regulated entity and is ~~.~~ OEFC is consolidated into the Province's Public Accounts~~, including its debt and other liabilities, assets, as well as its revenues and expenses, including the debt retirement charge (DRC) and interest expenses.~~ Prior to its restructuring, the debt of the former Ontario Hydro was also fully guaranteed by the Province.

While the former Ontario Hydro, as a rate-regulated entity, was able to service and pay down its debt and other liabilities from the electricity sector, on April 1, 1999, the former Ontario Hydro was restructured. As of that date, the Ministry of Finance determined that the estimated value of the assets of the former Ontario Hydro in a commercial and competitive electricity sector, was $17.2 billion, which was exceeded by total debt and other liabilities of $38.1 billion. The resulting shortfall of $20.9 billion was determined by the Ministry of Finance to be "stranded debt."

To allow OEFC to service and retire $38.1 billion in total debt including the $20.9 billion in stranded debt, the Province established a long-term plan where debt service and repayment would continue to be the responsibility of ratepayer and be serviced ~~be~~ through dedicated revenues from the electricity-sector including:~~. This would be broken down for the electricity sector as follows:~~

- ~~Notes receivable from the Province, OPG, Hydro One and IESO;~~
- Payments in lieu of taxes (PILs), which are equivalent to the corporate taxes and property taxes paid by private sector corporations, paid by OPG and municipal electricity utilities (note: subsequent to the Hydro One IPO, Hydro One no longer pays PIL of corporate income tax to OEFC. Provincial corporate taxes payable by Hydro One Inc. are due and payable by the Province to OEFC);
- DRC paid by electricity consumers; and
- The cumulative combined profits of OPG and Hydro One in excess of the government's annual interest cost (initially $520 million annually) of its investments in the two companies.

~~As of April 1, 1999, the present value of the PILs and the cumulative combined profits of OPG and Hydro One in excess of the government's $520 million annual interest cost of its investments in the two companies was estimated at $13.1 billion. As a result, subtracting the $13.1 billion from the stranded debt of $20.9 billion resulted in an initial estimate of $7.8 billion, for the residual stranded debt. As the amounts of PILs and profits is subject to actual results and uncertainty of future financial performance of the companies and future tax rates, the Electricity Act provided for the residual stranded debt to be determined from time to time.~~

**Commented [KK1]:** Given that the term residual stranded debt has been eliminated by legislation this para my cause confusion.

Over time the Government has made steady progress in paying down the stranded debt, to the point that the OEFC's net debt at the end of the 2016-17 fiscal year amounted to $3.2 billion. In light of this progress the ~~Legislation provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.~~

~~T~~the DRC has since been ended for residential users as of January 1, 2016, and the government has amended the Electricity Act to provide certainty to all other electricity users to end the DRC as of April 1, 2018.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Ken Kandeepan; Ronald Kwan; Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning |
| **Subject:** | RE: MO fact check |
| **Date:** | Tuesday, October 17, 2017 12:49:36 PM |
| **Attachments:** | QA Electricity Sector Debt_Oct17-17_v2_KK-Markup.docx |

---

Hi Ken,
I picked up some of the suggestions, and made some comments on others.
Thanks,
Ron

---

**From:** Ken Kandeepan
**Sent:** October-17-17 11:30
**To:** Ronald Kwan ; Anna Strathy
**Cc:** Gadi Mayman ; Mike Manning
**Subject:** RE: MO fact check

Hi
Pls see my edits for your consideration, in the attached document, using track changes.
Thanks
Ken k

---

**From:** Ronald Kwan
**Sent:** Tuesday, October 17, 2017 10:59 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: MO fact check

Hi Anna,
FYI. Energy asked us to review a Q&A, which we reviewed and revised somewhat as below. It was a short turn-around requested by Hilary, but perhaps we could send additional edits.
Ron

Begin forwarded message:

> **From:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Date:** October 17, 2017 at 10:52:08 AM EDT
> **To:** "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject: Fwd: MO fact check**
>
> Hi,
> How about this?
> Ron
> **Q and A – Electricity Sector Debt**
>
> **Q. Has electricity sector debt always been a ratepayer**

**obligation?**

The debt associated with the former Ontario Hydro is managed by its legal continuation, the Ontario Electricity Financial Corporation ("OEFC"), which is an agency of the Ministry of Finance. The OEFC is not an Ontario Energy Board regulated entity. OEFC is consolidated into the Province's Public Accounts, including its debt and other liabilities, assets, as well as its revenues and expenses, including the debt retirement charge (DRC) and interest expenses. Prior to its restructuring, the debt of the former Ontario Hydro was also fully guaranteed by the Province.

While the former Ontario Hydro, as a rate-regulated entity, was able to service and pay down its debt and other liabilities from the electricity sector, on April 1, 1999, the former Ontario Hydro was restructured. As of that date, the Ministry of Finance determined that the estimated value of the assets of the former Ontario Hydro in a commercial and competitive electricity sector, was $17.2 billion, which was exceeded by total debt and other liabilities of $38.1 billion. The resulting shortfall of $20.9 billion was determined by the Ministry of Finance to be "stranded debt."

To allow OEFC to service and retire $38.1 billion in total debt including the $20.9 billion in stranded debt, the Province established a long-term plan where debt service and repayment would be through dedicated revenues from the electricity-sector. This would be broken down for the electricity sector as follows:

- Notes receivable from the Province, OPG, Hydro One and IESO;
- Payments in lieu of taxes (PILs), which are equivalent to the corporate taxes and property taxes paid by private sector corporations, paid by OPG and municipal electricity utilities (**note**: subsequent to the Hydro One IPO, Hydro One no longer pays PIL of corporate income tax to OEFC. Provincial corporate taxes payable by Hydro One Inc. are due and payable by the Province to OEFC);
- DRC paid by electricity consumers; and
- The cumulative combined profits of OPG and Hydro One in excess of the government's annual interest cost (initially $520 million annually) of its investments in the two companies.

As of April 1, 1999, the present value of the PILs and the cumulative combined profits of OPG and Hydro One in excess of the government's $520 million annual interest cost of its investments in the two companies was estimated at $13.1 billion. As a result, subtracting the $13.1 billion from the stranded debt of $20.9 billion resulted in an initial estimate of $7.8 billion, for the residual stranded debt. As the amounts of PILs and profits is

subject to actual results and uncertainty of future financial performance of the companies and future tax rates, the Electricity Act provided for the residual stranded debt to be determined from time to time.

Legislation provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.

The DRC has since been ended for residential users as of January 1, 2016, and the government has amended the Electricity Act to provide certainty to all other electricity users to end the DRC as of April 1, 2018.

**From:** "Cox, Hilary (ENERGY)" <Hilary.Cox@ontario.ca>
**Date:** October 17, 2017 at 9:48:32 AM EDT
**To:** "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
**Subject: FW: MO fact check**

Hi Ron –
Our MO has asked for a QA on whether electricity debt has always resided in the electricity system or if it's ever been within the tax base. Staff have prepared the attached to respond to that request. Please review/fact check and send back to me ASAP for use today.
Hilary

**Hilary Cox**
Executive Assistant/Sr. Policy Advisor (A) |
Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |
E: Hilary.cox@ontario.ca

**Q and A – Electricity Sector Debt**

**Q. Has electricity sector debt always been a ratepayer obligation?**

The debt associated with the former Ontario Hydro is managed by its legal continuation, the Ontario Electricity Financial Corporation ("OEFC"), which is an agency of the Ministry of Finance. ~~The OEFC is not an Ontario Energy Board regulated entity and is .~~ OEFC is consolidated into the Province's Public Accounts, including its debt and other liabilities, assets, as well as its revenues and expenses, including the debt retirement charge (DRC) and interest expenses. Prior to its restructuring, the debt of the former Ontario Hydro was also fully guaranteed by the Province. The OEFC is not an Ontario Energy Board regulated entity.

While the former Ontario Hydro, as a rate-regulated entity, was able to service and pay down its debt and other liabilities from the electricity sector, on April 1, 1999, the former Ontario Hydro was restructured. As of that date, the Ministry of Finance determined that the estimated value of the assets of the former Ontario Hydro in a commercial and competitive electricity sector, was $17.2 billion, which was exceeded by total debt and other liabilities of $38.1 billion. The resulting shortfall of $20.9 billion was determined by the Ministry of Finance to be "stranded debt" under the Electricity Act, 1998.~~"~~

To allow OEFC to service and retire $38.1 billion in total debt, including the $20.9 billion in stranded debt, the Province established a long-term plan where debt service and repayment would continue to be the responsibility of ratepayers and be serviced ~~be~~ through dedicated revenues from the electricity-sector, including:~~. This would be broken down for the electricity sector as follows:~~

- Notes receivable from the Province, OPG, Hydro One and IESO;
- Payments in lieu of taxes (PILs), which are equivalent to the corporate taxes and property taxes paid by private sector corporations, paid by OPG and municipal electricity utilities (note: subsequent to the Hydro One IPO, Hydro One no longer pays PIL of corporate income tax to OEFC. Provincial corporate taxes payable by Hydro One Inc. are due and payable by the Province to OEFC);
- DRC paid by electricity consumers; and
- The cumulative combined profits of OPG and Hydro One in excess of the government's annual interest cost (initially $520 million annually) of its investments in the two companies.

As of April 1, 1999, the present value of the PILs and the cumulative combined profits of OPG and Hydro One in excess of the government's $520 million annual interest cost of its investments in the two companies was estimated at $13.1 billion. As a result, subtracting the $13.1 billion from the stranded debt of $20.9 billion resulted in an initial estimate of $7.8 billion, for the residual stranded debt. As the amounts of PILs and profits is subject to actual results and uncertainty of future financial performance of the companies and future tax rates, the Electricity Act provided for the residual stranded

**Commented [RK1]:** Need to leave this in, as the preceding paragraph refers to servicing the full $38.1 bn – i.e., the supportable debt of $17.2 bn too.

**Commented [KK2]:** Given that the term residual stranded debt has been eliminated by legislation this para my cause confusion.

**Commented [RK3R2]:** Most of it is from Energy's draft, and ties to the DRC, so I'd leave it in – and particularly if progress wants to be illustrated with the figure below of $3.2 billion.

debt to be determined from time to time, and the Act. provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.

Over time the Ggovernment's long-term plan has made steady progress in paying down the stranded debt, with thirteen consecutive years of reduction since March 31, 2004, to the point that the OEFC's net unfunded liability ("stranded debt") at the end of the 2016-17 fiscal year amounted to $3.2 billion. In lightthe context of this progress, the Legislation provided for the DRC to be paid by electricity consumers until the residual stranded debt was retired.

Commented [RK4]: Not specific to the elected government.

Tthe governmentDRC has since been ended the DRC for residential users as of January 1, 2016, and the government has amended the *Electricity Act* to end the DRC as of April 1, 2018, to providing electricity cost relief ande certainty to all other electricity users to end the DRC as of April 1, 2018.

Formatted: Font: Italic

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Tom McKinlay (MAG); Thouin, Alena (ENERGY) |
| **Cc:** | Tobias P. Whitfield (MOF); Mike Manning; Ken Kandeepan; Gadi Mayman; Ronald Kwan |
| **Subject:** | RE: Meeting conference call this morning at 10 a.m. |
| **Date:** | Thursday, September 14, 2017 9:01:44 AM |

Hi copying in the lawyers who should be invited to the conference call. Thank you.

**From:** Hanslep, Malle (MOF)
**Sent:** September 14, 2017 8:37 AM
**To:** ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY)
**Cc:** Whitfield, Tobias P. (MOF)
**Subject:** Meeting conference call this morning at 10 a.m.

Hi all,

There is an important meeting this morning at 10 a.m. to discuss OPG's comments on the current version of the term sheet as they have conveyed that this version does not meet their accounting needs. We have been advised that this issue must be resolved this morning so you are all being asked to be on this call. (as well as any Energy clients that should be on the call).

So I hope that you can make it!

Thank you.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

**From:** Nelms, Scott (MOF)
**To:** Mike Manning
**Cc:** Gadi Mayman; Anna Strathy
**Subject:** RE: Meeting for Monday -3:00 at OFA
**Date:** Saturday, September 16, 2017 10:55:11 AM

---

Thanks Mike. I'll be there.

Sent with BlackBerry Work
(www.blackberry.com)

From: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Date: Saturday, Sep 16, 2017, 7:22 AM
To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Cc: Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Subject: Meeting for Monday -3:00 at OFA

Hi Scott:
OPG has asked for a meeting to follow up on the support discussion late last week. John Lee would like to elaborate on the term sheet to get something he can take to E&Y and after that take to his Board. A meeting has been hastily set up for Monday by OPG at 3:00 at the OFA and you may have been missed, although I'm sure we'd have got to you on Monday. It would be great if you could attend or call in. As you know, the time line is getting short and your participation would be very helpful. Lawyers from both sides will be attending and hoping we can make some good progress.
Regards, Mike

Sent from my iPad

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Ronald Kwan
**To:** Gadi Mayman; Mike Manning; Emily Kerr
**Cc:** Anna Strathy; Gavin He
**Subject:** RE: Multi-Ministry Meeting | Remote Grid Connection
**Date:** Thursday, September 14, 2017 2:01:07 PM
**Attachments:** NorthernGrid_CostSharing_PO_CO v3.1_Markup-comments4.pptx

---

Hi Gadi,

We worked on a mark-up, and got some accounting points from Mark as well that we have included in the attached, with a few suggested markups to the accounting bullets from OPCD. We shared those with Mark so this is a draft pending OPCD feedback, which we could incorporate along with yours.

Ron

---

**From:** Gadi Mayman
**Sent:** September-12-17 15:31
**To:** Ronald Kwan ; Mike Manning ; Emily Kerr
**Cc:** Anna Strathy ; Gavin He
**Subject:** Fwd: Multi-Ministry Meeting | Remote Grid Connection

We should have a quick chat tomorrow morning to discuss how to respond.

Begin forwarded message:

> **From:** "Goode, Christopher (ENERGY)" <Christopher.Goode@ontario.ca>
> **Date:** September 12, 2017 at 3:27:26 PM EDT
> **To:** "Imbrogno, Serge (ENERGY)" <Serge.Imbrogno@ontario.ca>, "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>, "Bungaro-Yemec, Francesca (ENERGY)" <Francesca.Bungaro-Yemec@ontario.ca>, "Teliszewsky, Andrew (ENERGY)" <Andrew.Teliszewsky@ontario.ca>, "Baker, Carys (ENERGY)" <Carys.Baker@ontario.ca>, "Calwell, Carolyn (ENERGY)" <Carolyn.Calwell@ontario.ca>, "Feather, Adam (ENERGY)" <Adam.Feather@ontario.ca>, "Whittington, Matt (ENERGY)" <Matt.Whittington@ontario.ca>, "Nakahara, Ken (ENERGY)" <Ken.Nakahara@ontario.ca>, "Coker, Meaghan (ENERGY)" <Meaghan.Coker@ontario.ca>, "Chatterjee, Jeet (ENERGY)" <Jeet.Chatterjee@ontario.ca>, 'Alan Hibben' <alan.hibben@rogers.com>, "JJ Barnett" <jjbarnett@morpheusworks.ca>, "Angus, Helen (TBS)" <Helen.Angus@ontario.ca>, "MacIntyre, Kyle (TBS)" <Kyle.MacIntyre@ontario.ca>, "Hartog, Erika (TBS)" <Erika.Hartog@ontario.ca>, "Hughes, Karen (TBS)" <Karen.Hughes@ontario.ca>, 'David Barrett' <david.barrett@ieso.ca>, "stephanie.aldersley@ieso.ca" <stephanie.aldersley@ieso.ca>, "Laughton, Patrick (TBS)" <Patrick.Laughton@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Richardson, Deborah (MIRR)" <Deborah.Richardson2@ontario.ca>, "Crimp, Tanya (MIRR)" <Tanya.Crimp@ontario.ca>, "Adam, Laila (MIRR)" <Laila.Adam@ontario.ca>, "Mehanovic, Nermina (TBS)" <Nermina.Mehanovic@ontario.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>

**Cc:** "Adkar, Samir (ENERGY)" <Samir.Adkar@ontario.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Nelson, Dane (TBS)" <Dane.Nelson@ontario.ca>, "Assam, Camille (MIRR)" <Camille.Assam@ontario.ca>, "Pilla, Alison (MIRR)" <Alison.Pilla@ontario.ca>, "Garrow, Matt (MIRR)" <Matt.Garrow@ontario.ca>, "Prosen, Stephanie (MIRR)" <Stephanie.Prosen@ontario.ca>, "Martin, Devon (MIRR)" <Devon.Martin@ontario.ca>, "Cooney, Ayn (MIRR)" <Ayn.Cooney@ontario.ca>, "Batise, Shawn (MIRR)" <Shawn.Batise@ontario.ca>, "Hatvani, Jennifer (MIRR)" <Jennifer.Hatvani@ontario.ca>, "McKenna, John (MIRR)" <John.McKenna@ontario.ca>, "Billingsley, Alyssa (MIRR)" <Alyssa.Billingsley@ontario.ca>
**Subject: RE: Multi-Ministry Meeting | Remote Grid Connection**

Hello,

As a follow up to the meeting this afternoon, I will coordinate edits to the presentation by Friday.

As discussed, could OFA/TBS help provide slides on Accounting Considerations and Financing Considerations? Thanks,

Chris

-----Original Appointment-----
**From:** Imbrogno, Serge (ENERGY)
**Sent:** September-05-17 11:38 AM
**To:** Imbrogno, Serge (ENERGY); Schlaepfer, Martin (ENERGY); Bungaro-Yemec, Francesca (ENERGY); Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Feather, Adam (ENERGY); Whittington, Matt (ENERGY); Nakahara, Ken (ENERGY); Coker, Meaghan (ENERGY); Chatterjee, Jeet (ENERGY); 'Alan Hibben'; JJ Barnett; Angus, Helen (TBS); MacIntyre, Kyle (TBS); Hartog, Erika (TBS); Hughes, Karen (TBS); 'David Barrett'; stephanie.aldersley@ieso.ca; Laughton, Patrick (TBS); Kwan, Ronald (OFA); Veinot, Cindy (TBS); Richardson, Deborah (MIRR); Crimp, Tanya (MIRR); Adam, Laila (MIRR); Mehanovic, Nermina (TBS); Kim, John (OFA); Donaldson, Mark (TBS)
**Cc:** Adkar, Samir (ENERGY); Goode, Christopher (ENERGY); Mayman, Gadi (OFA); Nelson, Dane (TBS); Assam, Camille (MIRR); Pilla, Alison (MIRR); Garrow, Matt (MIRR); Prosen, Stephanie (MIRR); Martin, Devon (MIRR); Cooney, Ayn (MIRR); Batise, Shawn (MIRR); Hatvani, Jennifer (MIRR); McKenna, John (MIRR); Billingsley, Alyssa (MIRR)
**Subject:** Multi-Ministry Meeting | Remote Grid Connection
**When:** September-12-17 2:00 PM-2:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** 900 Bay Street, Hearst Block, 4th floor, Executive Boardroom
<< File: NorthernGrid_CostSharing_PO_CO v3.1.pptx >>

Ontario

MINISTRY OF
ENERGY

# Grid-Connection of Remote First Nations: Federal Cost-Sharing

Ministry of Energy

# Background: Remote First Nation Communities

- Twenty-five remote First Nation communities in Northwestern Ontario rely on local diesel generation, which is subsidized by the federal government and by Ontario ratepayers.
- **16 Communities** are part of a proposed connection project by Wataynikaneyap Power (Watay).
- **Pikangikum** is being connected on an accelerated timeline by Watay and federal capital cost contribution was announced August 17.
- **5 Communities** (remote Matawa FNs) could be economical to connect but are not currently part of the Watay partnership. IESO has a Matawa-focused working group to assist these communities in determining their path forward.
- **4 Communities** are uneconomic to connect to the provincial grid and other approaches such as renewables/ microgrids will be used to reduce diesel.

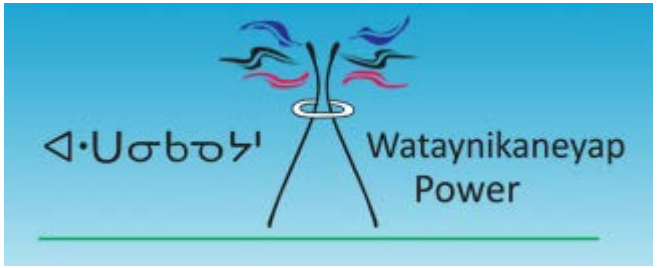
# Electricity in Remote First Nations

- Combined on-reserve population: **15,000 and growing**
- Total Peak Load: 18 MW, forecast to grow to ~85MW over the next 40 years
- Current annual diesel consumption: approximately 30 million litres
- Emissions from diesel generation over 40 years >6MT of GHG equivalent
- In a 2014 study by the Independent Electricity System Operator, grid connection was found to be the most certain and cost effective electricity supply option for most of the remote communities.
- Costs for electricity service in remote First Nation communities are a shared responsibility between Ontario and the federal government, as defined in historic agreements.
- Remote communities are either served by Hydro One Remote Communities Inc. (RemoteCo) or locally-owned Independent Power Authorities (IPAs).
    - RemoteCo: regulated by the Ontario Energy Board (OEB), serves 15 First Nation communities, and receives the Rural or Remote Rate Protection (RRRP) subsidy from Ontario ratepayers, in addition to federal subsidies.
    - IPAs: not regulated by the OEB, operate in 10 communities, and do not receive RRRP. IPAs receive subsidies from Indigenous and Northern Affairs Canada (INAC) and other federal departments.
- Upgrades to diesel generators are a federal responsibility.

# Challenges of Diesel Generation

- Electricity demand in many communities is nearing the capacity of current generators. The wait for generator upgrades results in load restrictions that prevent new houses, businesses, infrastructure from being connected.
- Aging generators have also led to poor reliability in some communities. In a remote northern context, outages create significant impacts on community members.
- Diesel generation is the highest cost generation in Ontario, primarily due to fuel costs. Fuel delivery costs are high; diesel is transported to the communities either by winter road or by air.
- There are a number of environmental issues with diesel including spills, ground contamination, air emissions (both local pollutants and GHGs) and noise.

# Wataynikaneyap Power Proposal



- Wataynikaneyap Power (Watay) is a 51%/49% partnership between 22 First Nations and FortisOntario that is proposing to undertake the connection of 16 remote communities. Many of Watay's partners are the remote communities that will be connected.
- Watay has completed significant development work, including on two main regulatory approvals:
  - **Environmental Assessment:** Watay has completed a terms of reference and a draft EA for Phase 1 of its project. Work on Phase 2 is under way.
  - **Ontario Energy Board:** Watay has obtained a transmitter license from the OEB. Watay is preparing to file a Leave to Construct application in late Fall 2017.

# Ontario's Actions to Advance Connection

- Ontario has long identified the importance of grid connection and has taken steps to advance this transformative initiative.
- The 2010 Long Term Energy Plan asked the OPA (now IESO) to develop a plan to grid-connect remote communities.
- The 2014 IESO study confirmed that 21 remote communities can be grid-connected with a positive business case over diesel generation. In the 2013 Long Term Energy Plan, remotes connection was named a priority project.
- In summer 2016, Cabinet passed policy and funding tools, including:
    - an Order-in-Council to declare the project a priority to expedite OEB approval,
    - designation of Wataynikaneyap Power as the transmitter for the project, and
    - regulatory amendments to provide a funding mechanism for Ontario's share of costs.
- Ontario and Canada have been in discussions regarding a cost-sharing arrangement to support grid connection since 2013.
- The connection of Pikangikum was identified as an early win and $60.2M in federal capital cost contribution was announced August 17, 2017.

# Progress on Negotiation

- There was a significant bilateral effort in late 2016 to draft the principles of an agreement and the creation of a federal business case that could support a contribution of $1 billion for connection of 21 communities.
- The 2017 federal budget did not include a commitment to the project.
- Since the budget, lead negotiation advisors have been established (Alan Hibben, ON; Tim Duncanson, CAN).
- ENERGY has built a team (including IESO and other key ministries) to undertake cost modeling to support Alan in concluding a negotiation in the short term.
    - The cost model quantifies risk and allows for calculation of the probability of cost outcomes to the federal government and Ontario ratepayers under different scenarios.
    - The model reflects a federal request to support the project through an ongoing payment stream rather than any commitment which would immediately expand their deficit.
    - Ontario's objective was to ensure that it was highly likely that Ontario ratepayers were not worse off after the project completion.

# Watay Cost Estimates

- Ontario, Canada and Watay entered into a Non-Disclosure Agreement to allow for sharing of project costs.
- As Watay has continued to develop the project, it has brought forward higher cost estimates than those used by IESO in its 2014 study. Watay's own numbers have also increased over time as follows:

| | 2014 IESO Draft Community Connection Plan | Watay's Financial Feasibility Study (by PwC, June 2015) | Current Watay cost information (Summer 2017) |
|---|---|---|---|
| **Capital Costs** for Phase 1+ Phase 2 including Pikangikum (in $M, 2017) | $1,063 (estimate did not include contingency), at 20% contingency: $1,276 | $1,196 (did not specify a contingency), at 20% contingency: $1,436 | $1,290 (not including contingency), including 20% contingency: $1,549 |

- Operating costs (OM&A) and sustaining capital have been proposed by Watay and while the approach to timing of costs differs from that used by IESO, the scale of costs is similar.
- Canada has raised concerns about Watay ability to control costs.
- However, the evolution of estimates may reflect more detailed information gathered through the Environmental Assessment work completed and information from seeking pricing from suppliers/contractors.
- Watay has been transparent about its view of the uncertainty of costs implied in its planning estimates

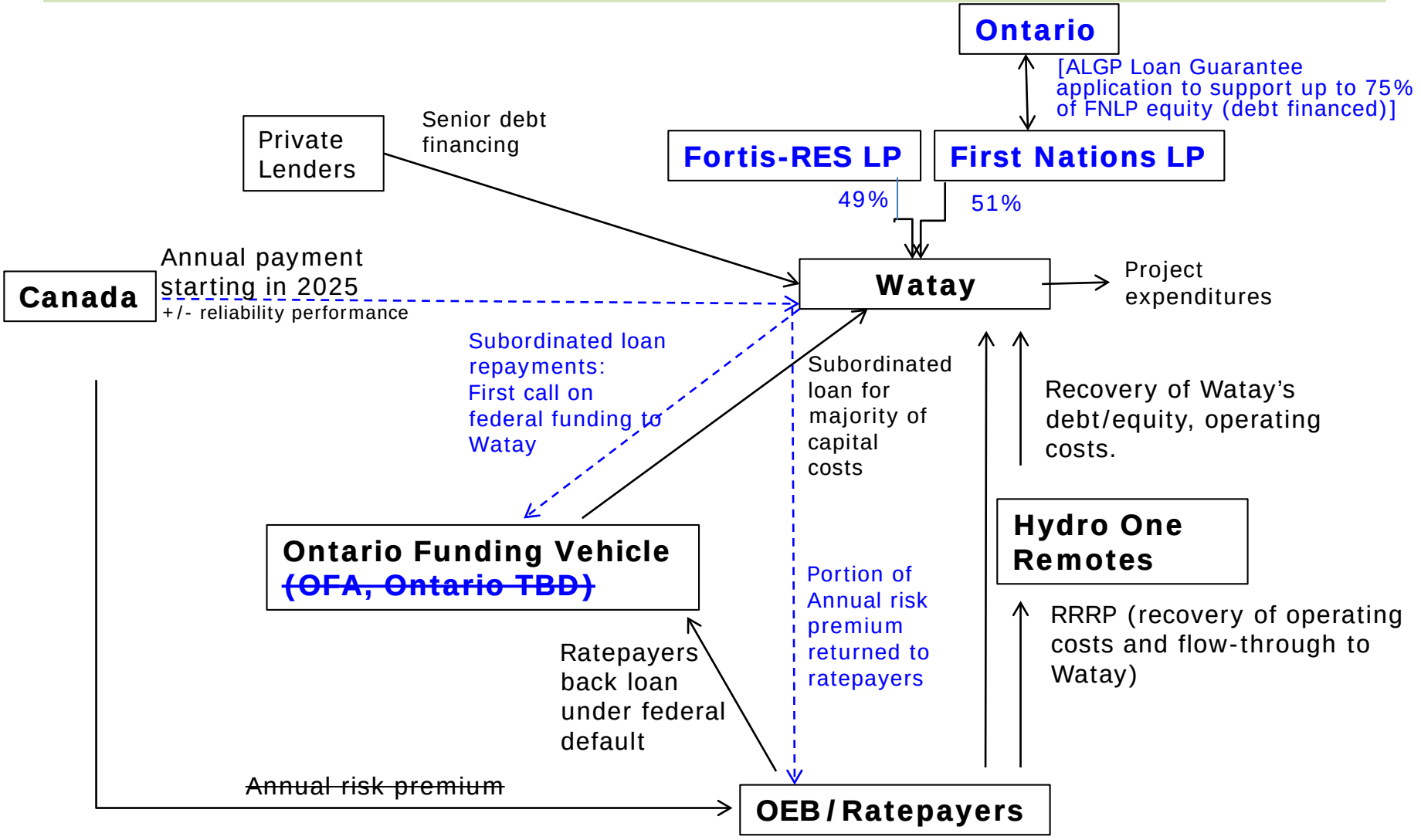
# Overview of Proposed Funding Mechanism

- Canada is interested in a funding arrangement where an annual payment, subject to budget appropriation, is provided to [Watay?] ~~Ontario~~ towards grid connection.
- [Watay] ~~Ontario~~ would then use this payment stream to finance a significant amount of the capital for the project – a loan to be provided by Ontario to Watay.
- To do this, Ontario would create a funding vehicle for loaning to Watay on the basis of the federal funds, with recourse to the ratebase.
- With the federal payment "subject to annual appropriation" there is a significant political risk of a future decision to discontinue payment.
- The payment stream would therefore contain a premium above Ontario's borrowing costs that would flow to both Ontario and to the ratebase to account for the risk of discontinued federal funding.
- [In the event of discontinued federal funding(?),] Ontario's share of project costs would then be recovered through the Rural or Remote Rate Protection (RRRP) subsidy. This could include a mix of capital and operating costs.
- The payment stream amount would be negotiated so that Ontario ratepayers have a strong probability of not being disadvantaged by grid connection in comparison to the status quo.

<u>What this achieves:</u>

- This approach reduces the equity position of Watay and the associated return on equity collected from Ontario ratepayers.
- In the absence of this structure, it is unlikely that Canada would be able to justify the required subsidy payment stream.
- Both levels of government avoid the requirement to include the project as a budget liability **[TBD: Accounting analysis/advice from OPCD pending].**

# Overview of Proposed Funding Mechanism



# Accounting and Financing Considerations

Accounting

- An assessment for a requirement to record a provision against the loan based on an assessment of default would be required based on the estimated recoverable value
  - A valuation allowance is reported in the operating surplus/deficit in a year based on an annual review of collectability or risk of loss using the best estimate of known circumstances, including economic conditions, financial performance or expected forgiveness
  - Assumptions regarding an approved or proposed mechanism for recourse to electricity ratepayers in the event of the loss of federal contributions to Watay would be a further valuation consideration/risk requiring assessment
- Additional financial exposure related to guarantees provided under the Aboriginal Loan Guarantee Program with respect to this project will need to be considered in assessing the overall provision for the loan
  - To-date, based on the Treasury Board approved parameters for the ALGP and the due diligence for the existing approved loan guarantees, no provisions have been taken.
- The reporting to reflect a sharing of credit for a risk rate premium with ratepayers is a concept that requires further discussion re: reporting conditions permitted under PSAS based on the final term structure
  - Interest revenue from the loan would be recognized by the Province in the Statement of Operations when earned (i.e. annually) based on the terms of the agreement (ref: PS3050.43)
  - A potential mechanism would be for Energy to get approval for an appropriation for an equivalent amount to the share of the rate premium notionally allocated for the benefit of ratepayers, to be flowed through, e.g., the RRRP.
- The issuance of the loan will increase the province's total debt, but net debt will be unaffected (balanced off by loan receivable) to the extent that no valuation allowance is required
- Any significant concessionary terms contained in a final agreement, or provincial contributions used to facilitate repayment of the loan, would be recognized as a fiscal expense when the transaction occurs

Financing

- The interest rate on an Ontario loan to Watay would have to reflect the associated commercial cost / risk associated with the entity and loan structure.
  - This would include looking at various risk premia (e.g., timing mismatch, amortising structure, cash flow volatility).
  - OFA staff preliminary analysis for a 40 year term loan estimates an Ontario interest rate of approximately 3.95%, before taking into account the muti-year, long-term federal appropriations risk.
  - For example, a 4.70% discount rate would, therefore, provide a premium of approximately 75 basis points ("bps" or 0.75 percentage points) over Ontario's required interest rate for such a loan. A portion of this premium could be shared with ratepayers.
  - The actual Ontario interest rate and additional risk premium would have to be reviewed based on a final loan structure and actual market conditions at the time.

# Negotiating Proposal

- Assumes Watay capital cost of $1,661M (nominal, includes 20% contingency)
- IESO financial model has been used to generate values in the table below so there is an 85% probability of no loss to ratepayers over the life of the project.
- A federal appropriations risk premium of 75 ~~150~~ bps over Province's 40 year cost of funds ~~(or 120bps over Province's 10 year cost of funds)~~ embodied in rates would be split evenly between Ontario ~~(OFA, other vehicle)~~ and ratepayers.
  - Were the federal government to cease payments, the responsibility of loan repayment would ultimately fall to the Ontario rate base. Consequently ratepayers should be compensated for assuming this risk.
  - Mechanism for offsetting rates, e.g., through RRRP, to be determined.

| | Payment in 2025 as % of Watay Capital Cost (Including Pikangikum) in Nominal Dollars | Discount Rate Including Ontario Premium | Value in Base Case (Watay estimate including 20% contingency, $1,661M nominal) | | |
|---|---|---|---|---|---|
| | | | 2025 Payment (Nominal) | NPV of Funding Stream ($2017) | Total Contributed Capital (nominal) |
| **40 - year escalating payment (2%) beginning year 8 (2025-2064)** | 3.40% | 4.70% | $56.6M | $941M | $1,156M |
| **10 - year escalating payment (2%) beginning year 8 (2025-2034)** | 9.55% | 3.76% | $158.9M | $1,057M | $1,240M |

# Comparison of Ontario and Canada Positions

- At the August 30, 2017, meeting with the federal team, Ontario was presented with Canada's view of assumptions for future avoided costs.
- Ontario does not support a number of the assumptions used by Canada, such as the view that there will be no long term growth in energy demand for communities 10 years post-connection. These differences may be related to the federal approach to negotiation.
- However, Canada's value of avoided costs is in the ballpark of Ontario's needs if a discount rate of 4.7% is applied to future costs.
- Federal avoided costs can be represented as a 40-year annual payment of approximately $55M [nominal?], starting in 2025, escalating at 2% per year [nominal?].
- This compares well with the 85% risk threshold for Ontario of a $56.6M starting payment.
- Once a federal payment amount is negotiated, other terms related to cost responsibility such as for diesel backup and updating distribution infrastructure will also require negotiation.
- Alan has already socialized numbers well above these levels to get Canada thinking.

# Related Ontario Support and Approvals: Aboriginal Loan Guarantee Program

- The Aboriginal Loan Guarantee Program (ALGP) is an application-based, discretionary program. Implemented by the OFA, significant due diligence is required to ensure the low likelihood of a call on the loan guarantee, justifying no provision and fiscal impact, consistent with Treasury Board approval of the parameters of the program.

- The First Nations equity holder in the project (First Nations Limited Partnership– FNLP) has applied for a Provincial guarantee under ALGP to cover the debt financing for a portion of its equity investment.
  - This amount is anticipated to be affected by the federal contribution amount.
  - This Provincial guarantee could potentially guarantee approximately 75% of the First Nation's equity, resulting in the Provincial government being at risk for a significant amount of capital in the project, via both the proponents' debt and equity financings.

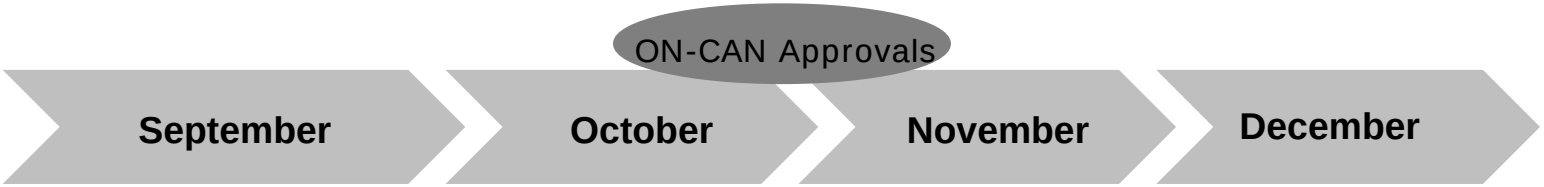
- Treasury Board approval will be sought for exceptions from ALGP parameters, including the $50 million maximum per project limit.
  - This is justifiable in this case given the number of First Nations involved and communities potentially benefitting from this large scale project.

- Treasury Board approval for an increase to the overall ALGP program envelope may also be sought, as needed, to accommodate this application (in the context of other applications to be met by the envelope).

# Next Steps

1. Determination from TBS/OFA on the viability of the proposed funding mechanism.
2. Presentation of proposal to Canada. Focused negotiation on amounts and contractual terms.
3. With an agreement-in-principle, Ontario and Canada to present opportunity to Watay. Subsequent negotiation with Watay as needed.
4. ON and Canada to obtain all required approvals, potentially aligned with FES
5. [OFA to continue due diligence on the FNLP ALGP application and seek required approvals (Treasury Board, OIC, Minister of Finance)]
6. Announcement of funding. Watay to submit Leave to Construct application.

| | | | | |
|---|---|---|---|---|
| **Initial proposal** to Canada | **TB Submission**<br>-Ontario funding vehicle<br>-Approval sought for target values with cap on negotiation mandate<br>-Potential TB report back | **Agreement** with Canada and Watay reached (target) | **Announcement** aligned with FES | Watay files for Leave to Construct |



**From:** Ken Kandeepan
**To:** Mike Manning; Malle Hanslep (MOF); Gadi Mayman
**Cc:** Ronald Kwan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy
**Subject:** RE: Next step on support agreement
**Date:** Thursday, September 14, 2017 8:27:08 AM

---

I will call them right now, note that Cindy is still on vacation, hopefully Mark Donaldson is available.

Thanks

-----Original Message-----
From: Mike Manning
Sent: Thursday, September 14, 2017 8:25 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Next step on support agreement

Assuming we can meet this morning, I think OPCD participation would be critical. I have a call into John Lee and waiting for his callback.
Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, September 14, 2017 8:21 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Next step on support agreement

Thanks. It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs. Should OPCD reps also be attending?

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: September 14, 2017 8:17 AM
To: Manning, Mike (OFA)
Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
Subject: Re: Next step on support agreement

OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.

> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>
> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.

>
>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>
>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>
>>
>> Sent from my iPad

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | Malle Hanslep (MOF); Gadi Mayman |
| **Cc:** | Ronald Kwan; Ken Kandeepan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | RE: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:24:51 AM |

---

Assuming we can meet this morning, I think OPCD participation would be critical. I have a call into John Lee and waiting for his callback.
Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, September 14, 2017 8:21 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Next step on support agreement

Thanks. It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs. Should OPCD reps also be attending?

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: September 14, 2017 8:17 AM
To: Manning, Mike (OFA)
Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
Subject: Re: Next step on support agreement

OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.

> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>
> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>
>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>
>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>
>>
>> Sent from my iPad

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Mike Manning |
| **Cc:** | Ronald Kwan; Ken Kandeepan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | RE: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:20:42 AM |

---

Thanks. It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs. Should OPCD reps also be attending?

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: September 14, 2017 8:17 AM
To: Manning, Mike (OFA)
Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
Subject: Re: Next step on support agreement

OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.

> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>
> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>
>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>
>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>
>>
>> Sent from my iPad

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Gadi Mayman |
| **Cc:** | Mike Manning; Malle Hanslep (MOF); Ronald Kwan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | RE: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:34:49 AM |

---

Thanks Mark just emailed me that he will make himself available this morning but as you point out better if the timing is before your 11 AM meeting.

-----Original Message-----
From: Gadi Mayman
Sent: Thursday, September 14, 2017 8:33 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: Next step on support agreement

Mark is at the same meeting that I am, so I copied him on the last email. He's well aware of his Deputy's expressed concern.

> On Sep 14, 2017, at 8:27 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:
>
> I will call them right now, note that Cindy is still on vacation, hopefully Mark Donaldson is available.
>
> Thanks
>
>
>
> -----Original Message-----
> From: Mike Manning
> Sent: Thursday, September 14, 2017 8:25 AM
> To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: RE: Next step on support agreement
>
> Assuming we can meet this morning, I think OPCD participation would be critical. I have a call into John Lee and waiting for his callback.
> Mike
>
> -----Original Message-----
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Thursday, September 14, 2017 8:21 AM
> To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: RE: Next step on support agreement
>
> Thanks.  It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs.  Should OPCD reps also be attending?

>
> -----Original Message-----
> From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
> Sent: September 14, 2017 8:17 AM
> To: Manning, Mike (OFA)
> Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
> Subject: Re: Next step on support agreement
>
> OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.
>
>> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>>
>> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>>
>>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>>
>>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>>
>>>
>>> Sent from my iPad
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
>

**From:** Mike Manning
**To:** Gavin He
**Subject:** RE: OFA/Energy MOU - Follow up from Nov 9 meeting
**Date:** Wednesday, November 15, 2017 10:39:36 AM

---

Hi Gavin:
No comments on my side.

Thanks, Mike

---

**From:** Gavin He
**Sent:** Wednesday, November 15, 2017 9:28 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: OFA/Energy MOU - Follow up from Nov 9 meeting

Hi Ken/Mike,

Just a friendly reminder that if you could provide me with your comments by noon today, that would be much appreciated.

Thanks,
Gavin He

---

**From:** Gavin He
**Sent:** Tuesday, November 14, 2017 9:04 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** John Kim <John.Kim@ofina.on.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
**Subject:** FW: OFA/Energy MOU - Follow up from Nov 9 meeting

Hi Ken and Mike,

Last week, we attended a meeting with Energy and OPG to discuss the Master Subscription Agreement for the equity injection process. Ken Russell drafted a MOU between OFA and Energy before about making the equity injection payments on Energy's behalf. Also, Ken R. drafted a FAA section 11.4 certificate form as well. After the meeting, Ken R. has updated both document, see attached, based on the discussion.

Could you please kindly review and let us know if you have any comments/concerns by **noon tomorrow, Wednesday, November 15th, 2017**? In addition, could you please review and confirm questions 2&3 from Energy in below email?

Please let me know if you would like to discuss this in person, and we can set up a brief meeting. Thanks in advance for your cooperation.

Thanks,
Gavin He

---

**From:** Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
**Sent:** Friday, November 10, 2017 11:29 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Graham Young (MOI) <Graham.Young@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>; Ogunrinde, Deni (ENERGY) <Deni.Ogunrinde@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** OFA/Energy MOU - Follow up from Nov 9 meeting

Hi John,

Thanks for meeting with us yesterday on the equity injection process. It was helpful to have everyone together in one place.

I hope to get the ENERGY-OFA MOU completed and ready for approvals by the end of next week. In order to do that, these are the following outstanding pieces. Right now, the OFA is holding the pen on the document, so it makes sense for you to include these items in the version you are working off and we can review next week:

1. Template for the FAA Section 11.4 certificate. I propose we include this as a schedule to the MOU. Also, please confirm the timing of when the certificate should be provided to OFA each month i.e., alongside the share subscription form, or after the payments have been made.

2. Identify how ENERGY should confirm that there is sufficient Appropriated Amount for the payments each month. The need for this is identified in 2b of the draft MOU. As discussed yesterday, it would be ideal if this could be done in the same certificate mentioned above.

3. Confirm the following:
    - OFA has OPG's wire transfer information (suggest including this information as a separate schedule)
    - Scanned electronic copies for the share subscription form & FAA certificate are acceptable
    - Every month, the OFA will inform the Ministry of Energy via email once the payments have been made.

Let us know if you have any questions. We are working with our legal on the delegation memos. Also as discussed at yesterday's meeting, we will update the flowchart and circulate.
Thanks,
Shruti

**Shruti Talwar**
*Director, Strategic Policy and Analytics Branch*
*Strategic, Network and Agency Policy Division*
*Ontario Ministry of Energy*
416.325-8698
shruti.talwar@ontario.ca

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Gavin He |
| **Cc:** | John Kim; Kenneth Russell; Alfonso Soriano; John Psinas; Risa Thau; George Sakura; Mike Manning |
| **Subject:** | RE: OFA/Energy MOU - Follow up from Nov 9 meeting |
| **Date:** | Wednesday, November 15, 2017 9:37:21 AM |

Hi Gavin
We have no comments on the MOU and the certificate, my previous suggestions have been incorporated by Ken R. With regard to Energy's questions pls see below in red.
From a cash management perspective Alfonso would like to have a contact in energy who can provide on a monthly basis the cash outflow with regard to this payment. Much appreciated if you can follow up with Energy and provide him with the contact details.
Thanks
Ken k

**From:** Gavin He
**Sent:** Tuesday, November 14, 2017 9:04 AM
**To:** Ken Kandeepan ; Mike Manning
**Cc:** John Kim ; Kenneth Russell
**Subject:** FW: OFA/Energy MOU - Follow up from Nov 9 meeting
Hi Ken and Mike,
Last week, we attended a meeting with Energy and OPG to discuss the Master Subscription Agreement for the equity injection process. Ken Russell drafted a MOU between OFA and Energy before about making the equity injection payments on Energy's behalf. Also, Ken R. drafted a FAA section 11.4 certificate form as well. After the meeting, Ken R. has updated both document, see attached, based on the discussion.
Could you please kindly review and let us know if you have any comments/concerns by **noon tomorrow, Wednesday, November 15th, 2017**? In addition, could you please review and confirm questions 2&3 from Energy in below email?
Please let me know if you would like to discuss this in person, and we can set up a brief meeting.
Thanks in advance for your cooperation.
Thanks,
Gavin He

**From:** Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
**Sent:** Friday, November 10, 2017 11:29 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Graham Young (MOI) <Graham.Young@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>; Ogunrinde, Deni (ENERGY) <Deni.Ogunrinde@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** OFA/Energy MOU - Follow up from Nov 9 meeting
Hi John,
Thanks for meeting with us yesterday on the equity injection process. It was helpful to have everyone together in one place.

I hope to get the ENERGY-OFA MOU completed and ready for approvals by the end of next week. In order to do that, these are the following outstanding pieces. Right now, the OFA is holding the pen

on the document, so it makes sense for you to include these items in the version you are working off and we can review next week:

1. Template for the FAA Section 11.4 certificate. I propose we include this as a schedule to the MOU. Also, please confirm the timing of when the certificate should be provided to OFA each month i.e., alongside the share subscription form, or after the payments have been made. Settlements would like updated wire transfer information from OPG and adding it as a separate schedule is a good idea.
2. 
3. Identify how ENERGY should confirm that there is sufficient Appropriated Amount for the payments each month. The need for this is identified in 2b of the draft MOU. As discussed yesterday, it would be ideal if this could be done in the same certificate mentioned above. Agreed, the certificate as it stands does provide for this.
4. Confirm the following:
    - OFA has OPG's wire transfer information (suggest including this information as a separate schedule)
    - Scanned electronic copies for the share subscription form & FAA certificate are acceptable
    - Every month, the OFA will inform the Ministry of Energy via email once the payments have been made. Yes, Settlements can do that.

Let us know if you have any questions. We are working with our legal on the delegation memos. Also as discussed at yesterday's meeting, we will update the flowchart and circulate.

Thanks,

Shruti

**Shruti Talwar**
*Director, Strategic Policy and Analytics Branch*
*Strategic, Network and Agency Policy Division*
*Ontario Ministry of Energy*
416.325-8698
shruti.talwar@ontario.ca

| | |
|---|---|
| **From:** | Gavin He |
| **To:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: OFA/Energy MOU - Follow up from Nov 9 meeting |
| **Date:** | Wednesday, November 15, 2017 9:28:15 AM |

Hi Ken/Mike,
Just a friendly reminder that if you could provide me with your comments by noon today, that would be much appreciated.
Thanks,
Gavin He

**From:** Gavin He
**Sent:** Tuesday, November 14, 2017 9:04 AM
**To:** Ken Kandeepan ; Mike Manning
**Cc:** John Kim ; Kenneth Russell
**Subject:** FW: OFA/Energy MOU - Follow up from Nov 9 meeting
Hi Ken and Mike,
Last week, we attended a meeting with Energy and OPG to discuss the Master Subscription Agreement for the equity injection process. Ken Russell drafted a MOU between OFA and Energy before about making the equity injection payments on Energy's behalf. Also, Ken R. drafted a FAA section 11.4 certificate form as well. After the meeting, Ken R. has updated both document, see attached, based on the discussion.
Could you please kindly review and let us know if you have any comments/concerns by **noon tomorrow, Wednesday, November 15th, 2017**? In addition, could you please review and confirm questions 2&3 from Energy in below email?
Please let me know if you would like to discuss this in person, and we can set up a brief meeting.
Thanks in advance for your cooperation.
Thanks,
Gavin He

**From:** Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
**Sent:** Friday, November 10, 2017 11:29 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Graham Young (MOI) <Graham.Young@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>; Ogunrinde, Deni (ENERGY) <Deni.Ogunrinde@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** OFA/Energy MOU - Follow up from Nov 9 meeting
Hi John,
Thanks for meeting with us yesterday on the equity injection process. It was helpful to have everyone together in one place.

I hope to get the ENERGY-OFA MOU completed and ready for approvals by the end of next week. In order to do that, these are the following outstanding pieces. Right now, the OFA is holding the pen on the document, so it makes sense for you to include these items in the version you are working off and we can review next week:

1. Template for the FAA Section 11.4 certificate. I propose we include this as a schedule to the

MOU. Also, please confirm the timing of when the certificate should be provided to OFA each month i.e., alongside the share subscription form, or after the payments have been made.

2. Identify how ENERGY should confirm that there is sufficient Appropriated Amount for the payments each month. The need for this is identified in 2b of the draft MOU. As discussed yesterday, it would be ideal if this could be done in the same certificate mentioned above.
3. Confirm the following:
    - OFA has OPG's wire transfer information (suggest including this information as a separate schedule)
    - Scanned electronic copies for the share subscription form & FAA certificate are acceptable
    - Every month, the OFA will inform the Ministry of Energy via email once the payments have been made.

Let us know if you have any questions. We are working with our legal on the delegation memos. Also as discussed at yesterday's meeting, we will update the flowchart and circulate.

Thanks,

Shruti

**Shruti Talwar**
*Director, Strategic Policy and Analytics Branch*
*Strategic, Network and Agency Policy Division*
*Ontario Ministry of Energy*
416.325-8698
shruti.talwar@ontario.ca

| | |
|---|---|
| **From:** | Gavin He |
| **To:** | Mike Manning |
| **Subject:** | RE: OFA/Energy MOU - Follow up from Nov 9 meeting |
| **Date:** | Wednesday, November 15, 2017 10:39:56 AM |

---

Hi Mike,
Thank you very much for the response.
Regards,
Gavin He

---

**From:** Mike Manning
**Sent:** Wednesday, November 15, 2017 10:40 AM
**To:** Gavin He
**Subject:** RE: OFA/Energy MOU - Follow up from Nov 9 meeting
Hi Gavin:
No comments on my side.
Thanks, Mike

---

**From:** Gavin He
**Sent:** Wednesday, November 15, 2017 9:28 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: OFA/Energy MOU - Follow up from Nov 9 meeting
Hi Ken/Mike,
Just a friendly reminder that if you could provide me with your comments by noon today, that would be much appreciated.
Thanks,
Gavin He

---

**From:** Gavin He
**Sent:** Tuesday, November 14, 2017 9:04 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** John Kim <John.Kim@ofina.on.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
**Subject:** FW: OFA/Energy MOU - Follow up from Nov 9 meeting
Hi Ken and Mike,
Last week, we attended a meeting with Energy and OPG to discuss the Master Subscription Agreement for the equity injection process. Ken Russell drafted a MOU between OFA and Energy before about making the equity injection payments on Energy's behalf. Also, Ken R. drafted a FAA section 11.4 certificate form as well. After the meeting, Ken R. has updated both document, see attached, based on the discussion.
Could you please kindly review and let us know if you have any comments/concerns by **noon tomorrow, Wednesday, November 15th, 2017**? In addition, could you please review and confirm questions 2&3 from Energy in below email?
Please let me know if you would like to discuss this in person, and we can set up a brief meeting.
Thanks in advance for your cooperation.
Thanks,
Gavin He

---

**From:** Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
**Sent:** Friday, November 10, 2017 11:29 AM

**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Graham Young (MOI) <Graham.Young@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>; Ogunrinde, Deni (ENERGY) <Deni.Ogunrinde@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
**Subject:** OFA/Energy MOU - Follow up from Nov 9 meeting

Hi John,

Thanks for meeting with us yesterday on the equity injection process. It was helpful to have everyone together in one place.

I hope to get the ENERGY-OFA MOU completed and ready for approvals by the end of next week. In order to do that, these are the following outstanding pieces. Right now, the OFA is holding the pen on the document, so it makes sense for you to include these items in the version you are working off and we can review next week:

1. Template for the FAA Section 11.4 certificate. I propose we include this as a schedule to the MOU. Also, please confirm the timing of when the certificate should be provided to OFA each month i.e., alongside the share subscription form, or after the payments have been made.
2. Identify how ENERGY should confirm that there is sufficient Appropriated Amount for the payments each month. The need for this is identified in 2b of the draft MOU. As discussed yesterday, it would be ideal if this could be done in the same certificate mentioned above.
3. Confirm the following:
    - OFA has OPG's wire transfer information (suggest including this information as a separate schedule)
    - Scanned electronic copies for the share subscription form & FAA certificate are acceptable
    - Every month, the OFA will inform the Ministry of Energy via email once the payments have been made.

Let us know if you have any questions. We are working with our legal on the delegation memos. Also as discussed at yesterday's meeting, we will update the flowchart and circulate.

Thanks,
Shruti

**Shruti Talwar**
*Director, Strategic Policy and Analytics Branch*
*Strategic, Network and Agency Policy Division*
*Ontario Ministry of Energy*
416.325-8698
shruti.talwar@ontario.ca

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan; Carlos Yep; James Devine |
| **Cc:** | Ronald Kwan; Mike Manning; Gavin He |
| **Subject:** | RE: OFHP Business Issues |
| **Date:** | Wednesday, November 01, 2017 11:39:43 AM |

---

Thanks Ken. I'm hoping to get back to you on the Q.
Carlos, any update….on the sub debt slide?
John

---

**From:** Ken Kandeepan
**Sent:** Wednesday, November 01, 2017 10:17 AM
**To:** John Kim ; Carlos Yep ; James Devine
**Cc:** Ronald Kwan ; Mike Manning ; Gavin He
**Subject:** RE: OFHP Business Issues

Thanks John, I don't have any major issues. I do note that the slide on the recovery of interest over the moratorium period remains blank, I understand a reg was crafted on this issue with IESO recovering these amounts from the Global Adjustment. Not sure whether the recovery is limited to IESO's interest costs on the credit line or extends to the interest costs of the financing entity over the four years in question.
Clarification from you or Energy will be much appreciated.
Slide 10: one small point it says the sub debt agreement includes the OFA as a party, my understanding is that the OFA will review the sub debt agreement and make sure we are comfortable with the terms, but will not be a signatory, you may want to communicate this to Energy.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Monday, October 30, 2017 11:48 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
**Subject:** FW: OFHP Business Issues

Pls. take a look and send any suggested edits/comments.
Thanks,
John

---

**From:** Montgomery, Kaitlin (MOF) [mailto:Kaitlin.Montgomery@ontario.ca]
**Sent:** Monday, October 30, 2017 11:46 AM
**To:** Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Dan Shear (ENERGY) <Dan.Shear@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Robin Lewis (MOF) <Robin.Lewis@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>
**Cc:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Kuppuswami, Kritika (MOF) <Kritika.Kuppuswami@ontario.ca>
**Subject:** RE: OFHP Business Issues

Hi everyone,

This product was put on hold but we've now been asked to refresh it.
Could you please take a look and provide any comments midday tomorrow.
Hilary – I think you guys would lead slides 6/8 but please let me know if that's not the case.
Thanks in advance,
Kaitlin

---

**From:** Montgomery, Kaitlin (MOF)
**Sent:** September 29, 2017 1:27 PM
**To:** Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Lewis, Robin (MOF) <Robin.Lewis@ontario.ca>
**Cc:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** OFHP Business Issues

Hi everyone,
We're pulling together a product summarizing all the outstanding business issues including status/next steps with respect to the Fair Hydro Plan for the Minister of Energy
I've attempted to fill out as much as possible (Hilary there's a couple placeholder slides where I had no content but I think those would be for ESP? Please correct me if I'm wrong).
Each of you are involved in various aspects of these issues so I'm hoping you can take a look to ensure we're accurately capturing each item.
I'm away next week but if you could provide your suggested edits to Keley by next Wednesday we would appreciate it. The briefing has not yet been set up so we will keep you posted if that timing needs to change.
Thanks in advance,
Kaitlin

**From:** Ken Kandeepan
**To:** John Kim; Carlos Yep; James Devine
**Cc:** Ronald Kwan; Mike Manning; Gavin He
**Subject:** RE: OFHP Business Issues
**Date:** Wednesday, November 01, 2017 10:17:10 AM

---

Thanks John, I don't have any major issues. I do note that the slide on the recovery of interest over the moratorium period remains blank, I understand a reg was crafted on this issue with IESO recovering these amounts from the Global Adjustment. Not sure whether the recovery is limited to IESO's interest costs on the credit line or extends to the interest costs of the financing entity over the four years in question.
Clarification from you or Energy will be much appreciated.
Slide 10: one small point it says the sub debt agreement includes the OFA as a party, my understanding is that the OFA will review the sub debt agreement and make sure we are comfortable with the terms, but will not be a signatory, you may want to communicate this to Energy.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Monday, October 30, 2017 11:48 AM
**To:** Ken Kandeepan ; Carlos Yep ; James Devine
**Cc:** Ronald Kwan ; Mike Manning ; Gavin He
**Subject:** FW: OFHP Business Issues
Pls. take a look and send any suggested edits/comments.
Thanks,
John

---

**From:** Montgomery, Kaitlin (MOF) [mailto:Kaitlin.Montgomery@ontario.ca]
**Sent:** Monday, October 30, 2017 11:46 AM
**To:** Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Dan Shear (ENERGY) <Dan.Shear@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Robin Lewis (MOF) <Robin.Lewis@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>
**Cc:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Kuppuswami, Kritika (MOF) <Kritika.Kuppuswami@ontario.ca>
**Subject:** RE: OFHP Business Issues
Hi everyone,
This product was put on hold but we've now been asked to refresh it.
Could you please take a look and provide any comments midday tomorrow.
Hilary – I think you guys would lead slides 6/8 but please let me know if that's not the case.
Thanks in advance,
Kaitlin

---

**From:** Montgomery, Kaitlin (MOF)
**Sent:** September 29, 2017 1:27 PM
**To:** Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Lewis, Robin (MOF) <Robin.Lewis@ontario.ca>

**Cc:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** OFHP Business Issues

Hi everyone,

We're pulling together a product summarizing all the outstanding business issues including status/next steps with respect to the Fair Hydro Plan for the Minister of Energy

I've attempted to fill out as much as possible (Hilary there's a couple placeholder slides where I had no content but I think those would be for ESP? Please correct me if I'm wrong).

Each of you are involved in various aspects of these issues so I'm hoping you can take a look to ensure we're accurately capturing each item.

I'm away next week but if you could provide your suggested edits to Keley by next Wednesday we would appreciate it. The briefing has not yet been set up so we will keep you posted if that timing needs to change.

Thanks in advance,

Kaitlin

| | |
|---|---|
| **From:** | Gavin He |
| **To:** | Carlos Yep; James Devine |
| **Cc:** | Mike Manning; John Kim |
| **Subject:** | RE: OFHP Business Issues |
| **Date:** | Wednesday, November 08, 2017 1:22:50 PM |
| **Attachments:** | 2017 10 30 OFHP Business Issues v02.pptx |

Hi Carlos/James,
Just want to follow up with you on below email and see if you have any comments/edits to the deck? If so, could you please send us the edits by 3:00 p.m. today?
Thanks,
Gavin He

---

**From:** John Kim
**Sent:** Monday, October 30, 2017 11:48 AM
**To:** Ken Kandeepan ; Carlos Yep ; James Devine
**Cc:** Ronald Kwan ; Mike Manning ; Gavin He
**Subject:** FW: OFHP Business Issues
Pls. take a look and send any suggested edits/comments.
Thanks,
John

---

**From:** Montgomery, Kaitlin (MOF) [mailto:Kaitlin.Montgomery@ontario.ca]
**Sent:** Monday, October 30, 2017 11:46 AM
**To:** Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Dan Shear (ENERGY) <Dan.Shear@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Robin Lewis (MOF) <Robin.Lewis@ontario.ca>; Sud, Manu (ENERGY) <Manu.Sud@ontario.ca>
**Cc:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Kuppuswami, Kritika (MOF) <Kritika.Kuppuswami@ontario.ca>
**Subject:** RE: OFHP Business Issues
Hi everyone,
This product was put on hold but we've now been asked to refresh it.
Could you please take a look and provide any comments midday tomorrow.
Hilary – I think you guys would lead slides 6/8 but please let me know if that's not the case.
Thanks in advance,
Kaitlin

---

**From:** Montgomery, Kaitlin (MOF)
**Sent:** September 29, 2017 1:27 PM
**To:** Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Lewis, Robin (MOF) <Robin.Lewis@ontario.ca>
**Cc:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** OFHP Business Issues
Hi everyone,
We're pulling together a product summarizing all the outstanding business issues including status/next steps with respect to the Fair Hydro Plan for the Minister of Energy
I've attempted to fill out as much as possible (Hilary there's a couple placeholder slides where I had no content but I think those would be for ESP? Please correct me if I'm wrong).

Each of you are involved in various aspects of these issues so I'm hoping you can take a look to ensure we're accurately capturing each item.
I'm away next week but if you could provide your suggested edits to Keley by next Wednesday we would appreciate it. The briefing has not yet been set up so we will keep you posted if that timing needs to change.
Thanks in advance,
Kaitlin

# OFHP Business Issues

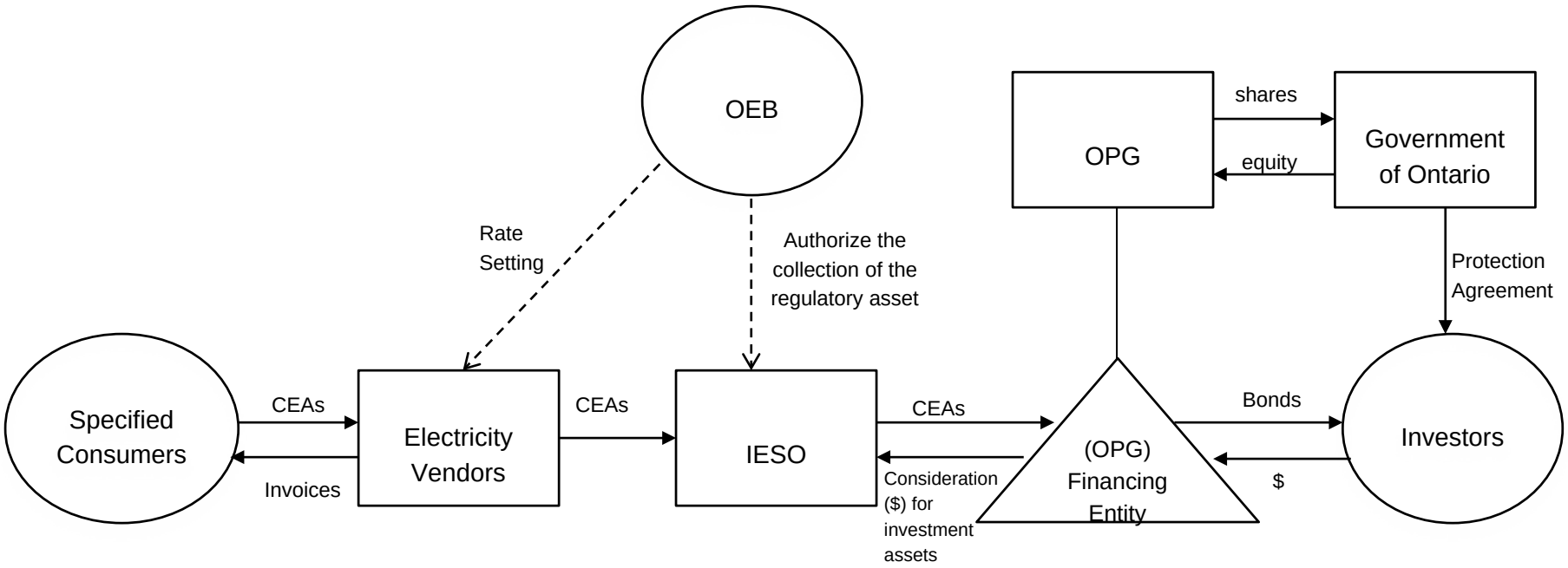
DRAFT – September 11, 2017

CONFIDENTIAL & COMMERCIALLY SENSITIVE

# Context: GA Financing

- The *Ontario Fair Hydro Act, 2017,* enables the IESO to establish a variance account to record the deferral amounts from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset as the Act provides the IESO the right to recover the balance in the variance account
  - The IESO can then sell the regulatory asset – the right to recover those deferred amounts from specified consumers in the future
  - OPG, as the Financial Services Manager, is authorized to establish one or more financing entities that may incur funding obligations
  - A financing entity purchasing the regulatory asset would effectively finance the IESO's shortfall in current rates not received from ratepayers
- In order to support the establishment of a financing entity, facilitate ongoing funding requirements of the Global Adjustment and optimize ratepayer impacts, OPG and the Province are working on finalizing the details for a number of business issues, including
  - Provincial Protection and Assurances Agreement (PPAA)
  - Fair Allocation Amount (FAA)
  - Management Fees Regulation
  - Moratorium Period Interest and Fee Recovery
  - Equity Injections
  - Subordinated Debt Agreement
  - PILs Exemption

# Global Adjustment Refinancing – Roles and Responsibilities




Note: CEAs are “clean energy adjustments”

# Provincial Protection and Assurances Agreement

**Overview:**

- To purchase the regulatory asset from the IESO, the Financing Entity must borrow a portion of the funds from capital markets (planned to be 51%, with other financing to come from OPG and, indirectly, the Province)
  - OPG's financial advisors have indicated that without adequate protection against legislative, judicial and organizational risk, the debt would not be financeable or would result in higher financing costs, to be passed on to ratepayers
- Upon receiving TB/MBC approval, and as contemplated under the Act, the Ministers of Energy and Finance have the authority to negotiate and enter into a protection agreement that supports the Financing Entity and prospective debt holders such that the Province would take over the funding obligations of the Financing Entity, under certain circumstances, including
  - Actions of the Legislative Assembly that undermine the financing arrangement; i.e., repeal or amendment of the Ontario Fair Hydro Plan Act, 2017, or new legislation that adversely affect the Financing Entity
  - A court decision that declares the rights of the Financing Entity to recover amounts from ratepayers to be invalid or unenforceable
  - Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to recover amounts related to funding obligations.

# Provincial Protection and Assurances Agreement (Con't)

- In the event the protection agreement is triggered, the Province will be required to pay the obligations of the Financing Entity including principal and interest payments on debt issued to date, any payments to derivatives counterparties and any outstanding payments to service providers
  - The Province could potentially service the debt and other obligations and could replace OPG as the financial services manager
- The protection agreement may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access the U.S. market as investors in that market will likely require additional compensation if the assumption agreement is triggered
- The Province will take on a contingent liability, which will increase over the duration of the Fair Hydro Plan and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest
- In the event the protection agreement is triggered, the Province's net debt will most likely increase by an amount equal to the contingent liability at that point in time
  - The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it has assumed under the protection agreement
  - IOD expense may increase between $0.8B and $1.0B per annum, assuming the protection agreement is triggered when debt is at its peak, and depending on the interest rate at which the Financing entity will be able to borrow at

**Next Steps:**

- Province to work with OPG and external legal counsel to finalise the Protection Agreement

# Fair Allocation Amount

**Overview:**

- xx

**Next Steps:**

- xx

# Management Fees Regulation

**Overview:**

- Ontario Power Generation Inc. (OPG) has been appointed the Financial Services Manager under the Fair Hydro Plan Act, 2017 to, among other things evaluate whether funding obligations should be incurred by the Trust for the purpose of acquiring and financing an investment interest.
- The Act enables OPG to achieve its objectives of consolidation of the Trust with OPG, and the ability to earn a return and take on risk, through its control of the Trust.
- The fee will have a fixed and variable component and be determined by formulas set out in a regulation, which as currently drafted includes:
    - **Base fee**: Monthly fee calculated as 7.5 basis points on monthly funding obligation. The base fee will be independently reviewed in 2018.
    - **Variable fee**: Annual fee of 5% of the difference difference between forecast and actual interest rates achieved for each of its funding tranches. The variable fee in any one year will be no more than 5 basis points of the net annual borrowing and can be no less than -5 basis of the net annual borrowing. If the variable fee is a negative amount, such amount will be deducted from the base fee in the following calendar year in twelve equal monthly payments
- The OEB will have a role in reviewing OPG's fees to ensure that the fees are consistent with prevailing market comparators

**Next Steps:**

- The Province is working with the OEB and OPG to develop a regulation setting out how the fees would be calculated including appropriate comparators for the OEBs review

# Moratorium Period Interest and Fee Recovery

**Overview:**

- xx

**Next Steps:**

- xx

# Equity Injections

**Overview:**

- To purchase the regulatory asset from the IESO, an OPG financing entity would be established and borrow funds from the following:
  - Capital markets (51%)
  - Subordinated OPG debt, financed through equity injections from the Province (44%) and OPG, financing from capital markets (5%)
- OPG will require equity injections on an ongoing basis in order to provide the 44% share of financing for the financing entity to acquire the regulatory asset from IESO and keep its capital structure in line, and will require flexibility in order to issue shares to the Province as needed, under a share subscription agreement
- The Ministry of Energy will be responsible for seeking approval for the investment envelope each year and managing the share subscription arrangement with OPG
  - On a periodic basis, OPG will send a notice of share subscription to the Ministry of Energy, requesting a certain amount of equity based on the amount of the regulatory asset it plans to purchase in a fiscal year; the Ontario Financing Authority will flow the funds

**Next Steps:**

- OPG and the Ministry of Energy have approved the Master Subscription Agreement and will proceed to execute in the coming weeks
- The Ministry of Energy will work with the OFA to ensure a mechanism is in place to flow the funds within the required timeframes after the request is made by OPG

# Subordinated Debt Agreement

**Overview:**

- OPG intends to lend the equity injection from the Province to the Trust by way of subordinated debt
- OPG proposes that OPG, the Fair Hydro Trust and the OFA will enter into a subordinated debt loan agreement, which outlines the terms of the subordinated debt [TBD]
- OPG has proposed that interest rates on the subordinated debt be established as follows:
  - During the Trust short term financing period, when bank facilities are used as funding vehicles, the interest rate on subordinated debt will be the sum of (1) funding rate on senior debt, and (2) additional spread margin of [xx], reflecting the credit rating difference between the senior and subordinated debt [TBD]
  - At the time when senior bonds are being issued to take out (term out) the short term financing, OPG will seek indicative coupon rates on the subordinated debt from dealers, reflecting the sum of underlying Government of Canada yield of equivalent term and the appropriate credit spread. The average indicative coupon rate from dealers will be calculated and set as the subordinated debt rate. [TBD]

**Next Steps:**

- OPG to incorporate the Province's comments into the next draft of the Subordinated Debt Agreement, which is tracking to be finalized by the end of September [TBD]

# PILs Exemption

**Overview:**

- It is currently contemplated that the first financing entity to be established by OPG, in its capacity as Financial Services Manager, will be a trust (Trust).
- The Trust would be subject to tax under the *Income Tax Act* (Canada) and the Ontario *Taxation Act, 2007*.
- The beneficiary of the Trust will be a corporation (Subco) that will be directly or indirectly wholly-owned by OPG.
  - Subco, as a subsidiary of OPG, would be exempt from federal and provincial corporate taxes payable by private sector companies. Instead, Subco would be subject to tax under the payments in lieu of taxes (PILs) regime under the *Electricity Act, 1998 (EA),* and would pay PILs to the Ontario Electricity Financial Corporation (OEFC);
  - PILs are used by the OEFC to help pay down ~~its~~ debt and other liabilities – OEFC is the legal continuation of the former Ontario Hydro.
- In order to mitigate the cost to ratepayers, a recommendation will be made to the Minister of Finance ~~to~~ to make a regulation under the EA that would exempt Subco from PILs on income received by Subco as beneficiary of the Trust.
- Should OPG, as Financial Services Manager, establish other financing entities in the future for purposes of the OFHP, the Ministry of Finance will ~~also~~ consider making similar recommendations to the Minister of Finance.

**Next Steps:**

- Letter to OPG provide comfort that Subco will be exempt from PILs on income received as beneficiary of the Trust.
- The Ministry of Finance is working with OPG on a draft regulation, which is intended to be made by the Minister of Finance in the Fall of 2017.

**From:** Ken Kandeepan
**To:** Anna Strathy; Mike Manning
**Subject:** RE: OFHP Fees Regulation Meeting
**Date:** Monday, October 02, 2017 4:28:47 PM

---

Hi Anna
As discussed I will be there, hopefully Mike will be as well.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Monday, October 02, 2017 4:17 PM
**To:** Ken Kandeepan ; Mike Manning
**Subject:** Re: OFHP Fees Regulation Meeting

Ken, Mike,
Gadi has a conflict, so he won't be attending this meeting tomorrow morning at 8:45am. Are you both available? I'll be there as well.
Anna
--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 2, 2017, at 3:29 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> > **Date:** October 2, 2017 at 3:24:39 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>
> > **Cc:** "Francesca Bungaro-Yemec (ENERGY)" <Francesca.Bungaro-Yemec@ontario.ca>, Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>
> > **Subject: Re: OFHP Fees Regulation Meeting**
> >
> > Thanks Martin. Please include Ken Kandeepan and Mike Manning from the OFA.
> >
> > --
> > Anna Strathy

Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 2, 2017, at 3:10 PM, Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca> wrote:

> Hi Anna,
> We're looking to set up a meeting tomorrow with OPG, OFA and the OEB to discuss the OFHP Fees Regulation that is currently being drafted. This would be an internal meeting only with no political staff.
> Francesca will be in touch with your office to find a mutually convenient time.
> Let me know if you have any questions or concerns.
> Thanks,
> Martin
> **Martin Schlaepfer**
> Director of Operations
> Deputy Minister's Office
> Ministry of Energy
> T: 416-326-7688
> E: martin.schlaepfer@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | John Kim; Ken Kandeepan; Carlos Yep |
| **Cc:** | Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 4:47:17 PM |

---

Just on the phone with him. He's fine with it. Thank you!

**From:** John Kim
**Sent:** Friday, October 13, 2017 4:46 PM
**To:** Anna Strathy ; Ken Kandeepan ; Carlos Yep
**Cc:** Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg

Hi Anna,

Any questions from Gadi?

John

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 4:11 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Thank you both. I've sent along to Gadi.

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 4:10 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

John is correct, the way I remember is that the idea of hiring and expert advisor was batted around at the meeting and the consensus was that the advisor's independence and the objectivity of the review would both be assured if RFP was issued by the OEB.

Thanks

Ken k

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:51 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Anna,

The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.

John

**From:** Anna Strathy

**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also

recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of “market comparable fees” reads as follows (the NTDs are for OFA’s input)?

arket comparable fees” means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include “or management and financial service providers”. If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm “securitization vehicles” and “structured”.]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine; Anna Strathy |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 1:16:49 PM |
| **Attachments:** | reg2017.0512.e04 with drafting instrns for leg counsel v4_EFB_v2_Markup.docx |

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan ; Carlos Yep
**Cc:** Mike Manning ; James Devine ; Anna Strathy
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could

theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

**CONFIDENTIAL**
Until filed with the
Registrar of Regulations

**REG2017.0512.e**
**4-TP**

**ONTARIO REGULATION**

made under the

**ONTARIO FAIR HYDRO PLAN ACT, 2017**

**FEES**

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"market comparable fees" means fees, expressed as a yearly percentage rate, charged by asset managers [or management and financial service providers] in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD for leg counsel: I am trying to get more clarity around "management and financial service providers". I am not sure whether the intent is to say "management service providers or financial service providers". If the intent is to refer to a "management and financial service provider", I will try to ascertain whether this is a well-understood industry "term of art" (since based on a brief search it did not appear to be).]**

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other structured investment funds, hedge funds and other similar structured funds,

(b) the scope of the services provided,

**Commented [GH1]:** OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

**Commented [DS2]:** NTD for OEB: Is "specified by" the right way to say this?

**Commented [DS3]:** NTD for ESP/MoF: Should there be a "temporal" connection too? E.g. "… services that are similar to, and provided at a time that is similar to the time the services are provided by, the FSM …".

(c) the level of the services provided, and

(d) the dollar amount of assets under management;

"funding tranche" means an ~~specific~~ issuance of ~~debt by a financing entity and constitutes all or part of a~~ funding obligations of a particular series, class or type that have the same terms;

"FSM services" means services provided by the Financial Services Manager to financing entities in relation to the management and administration of the financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

"market comparable forecast interest rates" means, in relation to a potential funding tranche described in the submissions mentioned in subsection 6 (3) or 6 (4), interest rates charged by lenders in Canada **[at the time the submissions are made]** for a debt obligation that,

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche **[in terms of length and commencement],**

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

**Commented [DS4]:** NTD for OPG/MoF: Should this contemplate "posted" rates rather than rates "charged by"?

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities.

**Forecast interest rate**

**1.1** For the purposes of this Regulation, the Financial Services Manager shall determine the forecast interest rate for a funding tranche that forms part of the net annual funding obligation for a year, by taking into account the following factors:

1. The interest rate for debt of or guaranteed by the Government of Ontario with a term or duration that is comparable to the term or duration of the funding tranche. **[NTD for leg counsel: We are confirming whether we need to refer to both "term" and "duration" here and in 2 ii below (and if yes, how these terms mean different things).]**

2. The estimated credit spread, relative to the interest rate described in paragraph 1, for a debt obligation that,

   i. has a principal amount that is comparable to the principal amount of the funding tranche,

   ii. has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

   iii. is based on a type of instrument that is comparable to the type of instrument of the funding tranche, ~~and~~

   iv. has payment rights that are similar to the payment rights of the funding tranche, and

   v. is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche.

3. Anticipated fees and commissions expected to be payable in connection with the issuance of the funding tranche.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities ~~in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by~~for FSM services provided to the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3] and a variable fee calculated under section [6].

**Formatted:** Highlight

**Formatted:** Highlight

**Commented [DS5]:** NTD for OPG/MoF: Even if the term is the same length, would the commencement date of the term not also be relevant?

**Commented [DS6]:** NTD for OPG: Energy Policy is asking whether the fees and commissions are relevant to the determination of the forecast interest rate for the tranche, given that they are recoverable by the FSM under s. 7(2) below.

(3) For the purposes of subsection 19 (3) of the Act, fees may be established and charged by the Financial Services Manager to financing entities for the recovery of costs and expenditures, as provided for in section [7].

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation.

**Base fee**

**3.** (1) Subject to sections [5.1] and [5.2], the Financial Services Manager shall establish the proposed base fee for a month as follows:

1. Determine the amount that is 0.075 per cent of the average monthly funding obligation for the preceding month.

2. Divide the amount determined under paragraph 1 by 12.

(2) The first month in respect of which the base fee may be established is ~~July~~ November 2017.

[OLC Note: Just need to confirm -- will there be an average monthly funding obligation for the month of June 2017? If not, it would not be possible to apply this method in respect of July 2017.] **[NTD for leg counsel: The first funding obligation may not be incurred until around November 2017. The base fee for a month would be zero if there was no average monthly funding obligation for the preceding month (i.e. if it was zero).]**

(3) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of the period from November 1, 2017 to December 31, 2018 no later than October 31, 2017.

(4) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the base fee would be charged.

**[NTD for leg counsel: Let's move the submission provisions (other than the amendment submission provision) from section 9 to the respective sections that deal with the fee in question. As you will see in s. 6 and 7 below, the submission process will be different for each of the types of fees (base, variable, and costs/expenditures).]**

**[Further NTD for leg counsel: The Board's review of the base fee for the period from July 1, 2017 to December 31, 2018 will be limited to ensuring that the base fee is calculated correctly (i.e. calculated in accordance with ss. 5 (3)).]**

**Commented [DS7]:** NTD for OPG/OEB: The policy instruction is to provide that costs and expenditures are recoverable so long as they relate to the matters described in s. 7.1(1), and that the Board review the costs and expenditures from that perspective.

In order to implement this instruction and give the Board the authority to review, we have to deem the costs and expenditures to be fees.

**Commented [JK8]:** To start – may need to be clarified

**Commented [JK9]:** 7.5bps for 2017 and 2018 to be reviewed by the OEB for future years? This subsection says the OEB to review for the initial proposed base fee also.

**Commented [DS10]:** NTD for OPG/OEB: Ss. 19(4) of the OFHPA requires the Board to approve fees.

**Board review of base fee**

**5.1** (1) The Board shall refuse to approve the proposed base fee mentioned in subsection 5 (3) if the Board is of the view that the proposed base fee was not established in accordance with subsection 3 (1).

(2) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal; and

(b) the Financial Services Manager shall submit to the Board a revised proposed base fee that is established in accordance with subsection 3 (1)

**[NTD for leg counsel: If the Board does not refuse to approve a proposed base fee under ss. (1) or (3), then we should explicitly say that the Board will approve the proposed base fee. Please tweak ss. 5.1 (1) and (3) accordingly.]**

(3) The Board may refuse to approve a proposed base fee mentioned in subsection 5 (4) if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees.

[OLC Note: Should this section only apply starting January 1, 2019?]

[OLC Note: Are you sure that this is the only reason why the Board can refuse the proposed base fee?]

**[NTD for leg counsel: In response to your notes, for the proposed base fee applicable in 2019 and beyond, the only basis upon with the Board can withhold approval is inconsistency with market comparable fees. For the proposed base fee applicable July 1 – Dec31/17 and Jan1 – Dec31/18, the Board can only withhold approval if the base fee is inconsistent with the formula in s. 3(1).]**

Commented [DS11]: Explanatory note for OEB: The reg-making powers in s. 19 of the OFHPA don't appear to provide the same ability to impose on the Board (by reg.) the base fee as with the OESP reg-making powers in ss. 79.2(6) of the OEBA.

(~~1.1~~4) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any**;** and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including details concerning the market comparable fees that the Financial Services Manager considered.

(5) **[NTD for leg counsel: Please add a provision that says that the process (i.e. the process outlined in ss. (1) and (2) above, or (3) and (4) above) will be repeated until the Board approves a proposed base fee for the year in question, unless you are of the view that that is already clearly implicit in those provisions.]**

(6) **[NTD for leg counsel: Please add a provision that says that:**

- **Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if any).**

- **Once the new proposed base fee is approved by the Board, the FSM shall make a "retrospective" adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be "retrospectively" applied to the whole period. By "period" I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the Financial Services Manager shall establish the variable fee for a year after 2017 as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite those circumstances in Column 2 of the Table:

| ~~Item~~ | ~~Column 1 Circumstances~~ | ~~Column 2 Rules~~ |
|---|---|---|
| ~~1.~~ | ~~The average annual funding obligations are $10 billion or less.~~ | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| ~~2.~~ | ~~The average annual funding obligations are greater than $10 billion.~~ | ~~The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~<br><br>~~The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~ |

(3) The Financial Services Manager shall make submissions to the Board in respect of the **[variable fee proposed to be charged in 2018, including the]** forecast interest rates for the funding tranches anticipated to be issued in 2018, no later than **[October 31, 2017]**.

(4) The Financial Services Manager shall make submissions to the Board in respect of the variable fee proposed to be charged in any year after 2018, including the forecast interest rates for the funding tranches anticipated to be issued in the year, no later than 120 days before the beginning of the year.

(5) If the Financial Services Manager has not submitted a forecast interest rate under subsection (3) or (4) for a funding tranche that will be issued in a year after 2017, the Board may require the Financial Services Manager to submit a proposed forecast interest rate for the funding tranche **[and may specify the time by which the submission must be made],** or the Board may determine the funding tranche taking into consideration the forecast interest rates submitted by the Financial Services Manager for the year under subsection (3) or (4).

**Board review of variable fee**

**6.1** (1) The Board may refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of subsection 6 (1) is inconsistent with ~~[~~market comparable forecast interest rates~~]~~.

[OLC Note: We provide an explanation for how to determine "market comparable fees" but we say nothing about how to determine "market comparable forecast interest rates". Please instruct.]

**[NTD for leg counsel: We have created a new defined term "market comparable forecast interest rates" to address this.]**

[OLC Note: Are you sure this is the only reason why the Board may refuse the proposed variable fee?] **[NTD for leg counsel: Yes.]**

(2) If the Board refuses to approve the proposed variable fee,

**Commented [JK12]:** In our previous correspondence, dated September 27, 2017 from Ken Kandeepan to Scott Nelms, we suggested delition of column 1 and item 2.

**Commented [DS13]:** NTD for OPG/OEB: Is this wording appropriate?

**Commented [DS14]:** NTD for OPG: The policy instruction is to not require the Board to apply linear interpolation to come up with a forecast interest rate, because the approach would be too prescriptive for this fairly limited subset of total fees.

**Commented [GH15]:** Same comment as above. OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was inconsistent with ~~[~~market comparable forecast interest rates~~]~~; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with ~~[~~market comparable forecast interest rates~~]~~.

**~~Fees~~ Reimbursements for costs and expenditures**

**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred by the Financial Services Manager,

(a) on behalf of the financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(b) under a management agreement between the Financial Services Manager and the financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Direct costs of the Financial Services Manager for employees who are dedicated to providing FSM services to financing entities.

~~(3) The costs and expenditures referred to in subsection (1) shall not include any overhead costs of the Financial Services Manager, including [….].~~
~~[OLC Note: The phrase "overhead costs" seems a bit vague. Examples would help.]~~

**Board review of fees for costs, expenditures**

**7.1** (1) The Board may refuse to approve a proposed fee for costs and expenditures or a portion of a proposed fee for costs and expenditures if the Board is of the view that the proposed fee is in respect of costs and expenditures that were not incurred in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities.

(2) If the Board refuses to approve the proposed fee or a portion of the proposed fee, the amount not approved shall not be payable to the Financial Services Manager and the associated costs and expenditures shall not be recoverable by the Financial Services Manager from the financing entity.

~~(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the proposed fee; and~~

~~(b) the Financial Services Manager shall submit to the Board,~~

~~(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and~~

~~(ii) a description of how the proposed fee is in respect of costs and expenditures that were incurred in relation to the management and administration of financing entities and the investment asset.~~

**Charging of fees**

**8.** (1) Subject to sections [5.1], [6.1] and [7.1], in charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month;

**Commented [DS16]:** NTD: Need to specify when the base fee is payable.

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month; and

(c) the fee for costs and expenditures for a month to be payable within [x] days after the end of the month.

**Commented [DS17]:** NTD: Need to specify when the fee for costs and expenditures is payable.

(2) If the variable fee for a year is a negative amount, it shall be deducted in twelve equal monthly instalments from the base fee payable in the following year.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

Commented [DS18]: NTD: Should this be based on the average of the opening and closing balances for the applicable period (e.g. year)?

(4) For the purposes of determining the average principal amount of funding obligations under subsection (3), the formula set out in subsection 1 (2) applies with necessary modifications.
[OLC Note: Please confirm that this works.]

**Submissions to Board**

**9.1** ~~(1) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in 2018 no later than October 31, 2017.~~

Formatted: section-e

~~(2) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the fees would be charged.~~

~~(3)~~ The Financial Services Manager may, no more frequently than once in any consecutive twelve month period, make submissions to the Board to amend any base fee or variable fee~~s~~ approved by the Board, and the provisions of section [5.1]. [6.1] or [7.1], as applicable, apply in respect of the submissions.

**Board approval, general**

**10.** (1) For the purpose of determining whether to approve a proposed fee, the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee.

(2) For the purpose of determining whether to approve a proposed base fee or variable fee, the Board may consider, as it determines to be appropriate, the advice provided by third party consultants and experts. **[NTD for leg counsel: We want to retain this provision, but the Board noted that they already have this ability without needing to specifically include it here. The Board flagged the risk of an adverse interpretation in other contexts where the Board is not given explicit statutory authority to consider advice of third party consultants and experts. Can we word this ss. 10(2) in such a way that it is just "for greater clarity"?]**

**Commencement**

**11. This Regulation comes into force on the day it is filed.**

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Anna Strathy; Ken Kandeepan; Carlos Yep |
| **Cc:** | Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 4:46:21 PM |

---

Hi Anna,
Any questions from Gadi?
John

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 4:11 PM
**To:** Ken Kandeepan ; John Kim ; Carlos Yep
**Cc:** Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg
Thank you both. I've sent along to Gadi.

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 4:10 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg
John is correct, the way I remember is that the idea of hiring and expert advisor was batted around at the meeting and the consensus was that the advisor's independence and the objectivity of the review would both be assured if RFP was issued by the OEB.
Thanks
Ken k

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:51 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg
Hi Anna,
The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.
John

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg
Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]

**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

"market comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

)llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; John Kim; Carlos Yep |
| **Cc:** | Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 4:11:05 PM |

---

Thank you both. I've sent along to Gadi.

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 4:10 PM
**To:** John Kim ; Anna Strathy ; Carlos Yep
**Cc:** Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg

John is correct, the way I remember is that the idea of hiring and expert advisor was batted around at the meeting and the consensus was that the advisor's independence and the objectivity of the review would both be assured if RFP was issued by the OEB.
Thanks
Ken k

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:51 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Anna,
The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.
John

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM

**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.

Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

"market comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

(i) type of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

(ii) scope of the services provided,

(iii) level of the services provided, and

›llar amount of assets under management;

Thanks,
Daniel

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | John Kim; Anna Strathy; Carlos Yep |
| **Cc:** | Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 4:09:47 PM |

---

John is correct, the way I remember is that the idea of hiring and expert advisor was batted around at the meeting and the consensus was that the advisor's independence and the objectivity of the review would both be assured if RFP was issued by the OEB.

Thanks

Ken k

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:51 PM
**To:** Anna Strathy ; Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg

Hi Anna,

The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.

John

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,

The latest and pls. have one last look.

Anna, Ron is OK to send these along. Would it be OK with Gadi too?

Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

ollar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Anna Strathy; Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 3:51:03 PM |

Hi Anna,
The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.
John

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim ; Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.

Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg
Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg
Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg
Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | John Kim; Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 3:41:35 PM |

---

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine ; Anna Strathy
**Subject:** RE: OFHP fees reg

Hi all,

The latest and pls. have one last look.

Anna, Ron is OK to send these along. Would it be OK with Gadi too?

Thanks,

John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,

We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.

Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.

Thanks,

John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,

Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

:4 – Can the OFA provide comments on the below draft definition of “market comparable fees” reads as follows (the NTDs are for OFA’s input)?

ıarket comparable fees” means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include “or management and financial service providers”. If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm “securitization vehicles” and “structured”.]**

ope of the services provided,

vel of the services provided, and

)llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | John Kim; Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 3:18:29 PM |

---

Thanks John. I'll ask Gadi to have a quick look.

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine ; Anna Strathy
**Subject:** RE: OFHP fees reg

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

"market comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**NTD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does**

**this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

)llar amount of assets under management;

Thanks,

Daniel

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine; Anna Strathy |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 3:17:02 PM |
| **Attachments:** | Draft Fees Regulation for OPG Trust and OFHP_OFA Q&As_Markup4.docx<br>reg2017.0512.e04 with drafting instrns for leg counsel v4_EFB_v3.docx |

---

Hi all,
The latest and pls. have one last look.
Anna, Ron is OK to send these along. Would it be OK with Gadi too?
Thanks,
John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine ; Anna Strathy
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a

meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,
vel of the services provided, and
)llar amount of assets under management;

Thanks,
Daniel

## Draft Fees Regulation for OPG Trust and OFHP

**Question 1:** On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

**OFA Comment:** OFA would defer this item to Energy and OFA staff are of the view that retroactive adjustments of the fees applying once the rates are finalized would be acceptable. This would mean that the old rates would continue to apply until the decisions are made by the OEB.

**Question 2:** Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

**OFA Comment:** OFA had indicated that the earlier proposal of 10 bps for the initial proposed base fee was too high and since then a decision to set the initial proposed base fee at 7.5 bps was made. While the 7.5 bps would be applicable in the first year of operations it was also agreed that the OEB will retain an outside expert to provide recommendations on an appropriate rate based on a market survey. In the draft regulation provided by Energy on October 12, 2017, the draft regulation would require the OEB to set the base fee rates based on the market comparable fees. OFA staff are of the view that there should be no references made in the draft regulation about investment vehicles listed in the Question 2 and in Question 4, including securitization vehicles, actively managed investment funds, structured investment funds, hedge funds and/or other types of structured funds. Securitization vehicles, for example, involve significant amount of work 'packaging' a large number of underlying assets into an investment structure. [See more detailed example below.] The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

More Detailed Analysis:

The Financing entity will buy a global asset of $2.5B from IESO and will receive 480 payments from IESO (i.e. ,12 monthly payments for 40 years)

**Commented [JK1]:** CMD provided additional detail.

A vehicle leasing securitization program will consist of leases with an average term of 36 months with monthly payments and average amount of $25,000 [illustratively]

i.e. To manage a $2.5 billion program for 3yrs would consist of 100,000 leases ($2,500,000,000 divided by $25,000 average lease), involve 3,600,000 payments (100,000 leases X 36 monthly payments) and this would need to be done another 13 times (i.e., for 39 years).

**Question 3:** Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

**OFA Comment:** OFA staff are of the view that this is acceptable if done in accordance with the Act and if appropriately audited.

**Question 4:** Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

"market comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

(a) the type of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

(b) the scope of the services provided,

(c) the level of the services provided, and

(d) the dollar amount of assets under management;"

**OFA Comment:** OFA staff are of the view that there should be no references made in the draft regulation about investment vehicles listed in the Question 2 and Question 4, including securitization vehicles, actively managed investment funds, structured investment funds, hedge funds and/or other types of structured funds. Securitization vehicles, for example, involve significant amount of work 'packaging' a large number of underlying assets into an investment structure. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such

market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

**CONFIDENTIAL**
Until filed with the
Registrar of Regulations

**REG2017.0512.e**
**4-TP**

**ONTARIO REGULATION**

made under the

**ONTARIO FAIR HYDRO PLAN ACT, 2017**

**FEES**

**Definitions**

**1.** (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"market comparable fees" means fees, expressed as a yearly percentage rate, charged by asset managers [or management and financial service providers] in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD for leg counsel: I am trying to get more clarity around "management and financial service providers". I am not sure whether the intent is to say "management service providers or financial service providers". If the intent is to refer to a "management and financial service provider", I will try to ascertain whether this is a well-understood industry "term of art" (since based on a brief search it did not appear to be).]**

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other structured investment funds, hedge funds and other similar structured funds,

(b) the scope of the services provided,

**Commented [OFA1]:** OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

**Commented [DS2]:** NTD for OEB: Is "specified by" the right way to say this?

**Commented [DS3]:** NTD for ESP/MoF: Should there be a "temporal" connection too? E.g. "… services that are similar to, and provided at a time that is similar to the time the services are provided by, the FSM …".

(c) the level of the services provided, and

(d) the dollar amount of assets under management;

"funding tranche" means an ~~specific~~ issuance of ~~debt by a financing entity and constitutes all or part of a~~ funding obligations of a particular series, class or type that have the same terms;

"FSM services" means services provided by the Financial Services Manager to financing entities in relation to the management and administration of the financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

"market comparable forecast interest rates" means, in relation to a potential funding tranche described in the submissions mentioned in subsection 6 (3) or 6 (4), interest rates charged by lenders in Canada **[at the time the submissions are made]** for a debt obligation that,

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

**Commented [DS4]:** NTD for OPG/MoF: Should this contemplate "posted" rates rather than rates "charged by"?

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities.

**Forecast interest rate**

**1.1** For the purposes of this Regulation, the Financial Services Manager shall determine the forecast interest rate for a funding tranche that forms part of the net annual funding obligation for a year, by taking into account the following factors:

1. The interest rate for debt of or guaranteed by the Government of Ontario with a term or duration that is comparable to the term or duration of the funding tranche.
**[NTD for leg counsel: We are confirming whether we need to refer to both "term" and "duration" here and in 2 ii below (and if yes, how these terms mean different things).]**

2. The estimated credit spread, relative to the interest rate described in paragraph 1, for a debt obligation that,

   i. has a principal amount that is comparable to the principal amount of the funding tranche,

   ii. has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

   iii. is based on a type of instrument that is comparable to the type of instrument of the funding tranche, ~~and~~

   iv. has payment rights that are similar to the payment rights of the funding tranche, and

   v. is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche.

3. Anticipated fees and commissions expected to be payable in connection with the issuance of the funding tranche.

**Fees that may be established, charged**

**2.** (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities ~~in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by~~for FSM services provided to the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3] and a variable fee calculated under section [6].

**Formatted:** Highlight

**Formatted:** Highlight

**Commented [DS5]:** NTD for OPG/MoF: Even if the term is the same length, would the commencement date of the term not also be relevant?

**Commented [DS6]:** NTD for OPG: Energy Policy is asking whether the fees and commissions are relevant to the determination of the forecast interest rate for the tranche, given that they are recoverable by the FSM under s. 7(2) below.

(3) For the purposes of subsection 19 (3) of the Act, fees may be established and charged by the Financial Services Manager to financing entities for the recovery of costs and expenditures, as provided for in section [7].

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation.

**Base fee**

**3.** (1) Subject to sections [5.1] and [5.2], the Financial Services Manager shall establish the proposed base fee for a month as follows:

1. Determine the amount that is 0.075 per cent of the average monthly funding obligation for the preceding month.

2. Divide the amount determined under paragraph 1 by 12.

(2) The first month in respect of which the base fee may be established is ~~July~~ November 2017.

[OLC Note: Just need to confirm -- will there be an average monthly funding obligation for the month of June 2017? If not, it would not be possible to apply this method in respect of July 2017.] **[NTD for leg counsel: The first funding obligation may not be incurred until around November 2017. The base fee for a month would be zero if there was no average monthly funding obligation for the preceding month (i.e. if it was zero).]**

(3) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of the period from November 1, 2017 to December 31, 2018 no later than October 31, 2017.

(4) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the base fee would be charged.

**[NTD for leg counsel: Let's move the submission provisions (other than the amendment submission provision) from section 9 to the respective sections that deal with the fee in question. As you will see in s. 6 and 7 below, the submission process will be different for each of the types of fees (base, variable, and costs/expenditures).]**

**[Further NTD for leg counsel: The Board's review of the base fee for the period from July 1, 2017 to December 31, 2018 will be limited to ensuring that the base fee is calculated correctly (i.e. calculated in accordance with ss. 5 (3)).]**

**Commented [DS7]:** NTD for OPG/OEB: The policy instruction is to provide that costs and expenditures are recoverable so long as they relate to the matters described in s. 7.1(1), and that the Board review the costs and expenditures from that perspective.

In order to implement this instruction and give the Board the authority to review, we have to deem the costs and expenditures to be fees.

**Commented [OFA8]:** To start – may need to be clarified

**Commented [OFA9]:** 7.5bps for 2017 and 2018 to be reviewed by the OEB for future years? This subsection says the OEB to review for the initial proposed base fee also.

**Commented [DS10]:** NTD for OPG/OEB: Ss. 19(4) of the OFHPA requires the Board to approve fees.

**Board review of base fee**

**5.1** (1) The Board shall refuse to approve the proposed base fee mentioned in subsection 5 (3) if the Board is of the view that the proposed base fee was not established in accordance with subsection 3 (1).

(2) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal; and

(b) the Financial Services Manager shall submit to the Board a revised proposed base fee that is established in accordance with subsection 3 (1)

**[NTD for leg counsel: If the Board does not refuse to approve a proposed base fee under ss. (1) or (3), then we should explicitly say that the Board will approve the proposed base fee. Please tweak ss. 5.1 (1) and (3) accordingly.]**

(3) The Board may refuse to approve a proposed base fee mentioned in subsection 5 (4) if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees.

[OLC Note: Should this section only apply starting January 1, 2019?]

[OLC Note: Are you sure that this is the only reason why the Board can refuse the proposed base fee?]

**[NTD for leg counsel: In response to your notes, for the proposed base fee applicable in 2019 and beyond, the only basis upon with the Board can withhold approval is inconsistency with market comparable fees. For the proposed base fee applicable July 1 – Dec31/17 and Jan1 – Dec31/18, the Board can only withhold approval if the base fee is inconsistent with the formula in s. 3(1).]**

Commented [DS11]: Explanatory note for OEB: The reg-making powers in s. 19 of the OFHPA don't appear to provide the same ability to impose on the Board (by reg.) the base fee as with the OESP reg-making powers in ss. 79.2(6) of the OEBA.

(~~1.1~~4) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any**;** and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including details concerning the market comparable fees that the Financial Services Manager considered.

(5) **[NTD for leg counsel: Please add a provision that says that the process (i.e. the process outlined in ss. (1) and (2) above, or (3) and (4) above) will be repeated until the Board approves a proposed base fee for the year in question, unless you are of the view that that is already clearly implicit in those provisions.]**

(6) **[NTD for leg counsel: Please add a provision that says that:**

- **Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if any).**

- **Once the new proposed base fee is approved by the Board, the FSM shall make a "retrospective" adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be "retrospectively" applied to the whole period. By "period" I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

**Variable fee**

**6.** (1) Subject to subsection (2) and section 6.1, the Financial Services Manager shall establish the variable fee for a year after 2017 as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite those circumstances in Column 2 of the Table:

| ~~Item~~ | ~~Column 1~~<br>~~Circumstances~~ | ~~Column 2~~<br>~~Rules~~ |
|---|---|---|
| ~~1.~~ | ~~The average annual funding obligations are $10 billion or less.~~ | The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.<br><br>The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation. |
| ~~2.~~ | ~~The average annual funding obligations are greater than $10 billion.~~ | ~~The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~<br><br>~~The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~ |

(3) The Financial Services Manager shall make submissions to the Board in respect of the **[variable fee proposed to be charged in 2018, including the]** forecast interest rates for the funding tranches anticipated to be issued in 2018, no later than **[October 31, 2017]**.

(4) The Financial Services Manager shall make submissions to the Board in respect of the variable fee proposed to be charged in any year after 2018, including the forecast interest rates for the funding tranches anticipated to be issued in the year, no later than 120 days before the beginning of the year.

(5) If the Financial Services Manager has not submitted a forecast interest rate under subsection (3) or (4) for a funding tranche that will be issued in a year after 2017, the Board may require the Financial Services Manager to submit a proposed forecast interest rate for the funding tranche **[and may specify the time by which the submission must be made],** or the Board may determine the funding tranche taking into consideration the forecast interest rates submitted by the Financial Services Manager for the year under subsection (3) or (4).

**Board review of variable fee**

**6.1** (1) The Board may refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of subsection 6 (1) is inconsistent with ~~[~~market comparable forecast interest rates~~]~~.

[OLC Note: We provide an explanation for how to determine "market comparable fees" but we say nothing about how to determine "market comparable forecast interest rates". Please instruct.]

**[NTD for leg counsel: We have created a new defined term "market comparable forecast interest rates" to address this.]**

[OLC Note: Are you sure this is the only reason why the Board may refuse the proposed variable fee?] **[NTD for leg counsel: Yes.]**

(2) If the Board refuses to approve the proposed variable fee,

**Commented [OFA12]:** Delete references to the table and column 1 and column 2, consistent with the comment below.

**Commented [OFA13]:** In our previous correspondence, dated September 27, 2017 from Ken Kandeepan to Scott Nelms, we suggested deletion of column 1 and item 2.

**Commented [DS14]:** NTD for OPG/OEB: Is this wording appropriate?

**Commented [DS15]:** NTD for OPG: The policy instruction is to not require the Board to apply linear interpolation to come up with a forecast interest rate, because the approach would be too prescriptive for this fairly limited subset of total fees.

**Commented [OFA16]:** Same comment as above. OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was inconsistent with ~~[~~market comparable forecast interest rates~~]~~; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with ~~[~~market comparable forecast interest rates~~]~~.

**~~Fees~~ Reimbursements for costs and expenditures**

**7.** (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred by the Financial Services Manager,

(a) on behalf of the financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(b) under a management agreement between the Financial Services Manager and the financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Direct costs of the Financial Services Manager for employees who are dedicated to providing FSM services to financing entities.

~~(3) The costs and expenditures referred to in subsection (1) shall not include any overhead costs of the Financial Services Manager, including [….].~~
~~[OLC Note: The phrase "overhead costs" seems a bit vague. Examples would help.]~~

**Board review of fees for costs, expenditures**

**7.1** (1) The Board may refuse to approve a proposed fee for costs and expenditures or a portion of a proposed fee for costs and expenditures if the Board is of the view that the proposed fee is in respect of costs and expenditures that were not incurred in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities.

(2) If the Board refuses to approve the proposed fee or a portion of the proposed fee, the amount not approved shall not be payable to the Financial Services Manager and the associated costs and expenditures shall not be recoverable by the Financial Services Manager from the financing entity.

~~(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the proposed fee; and~~

~~(b) the Financial Services Manager shall submit to the Board,~~

~~(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and~~

~~(ii) a description of how the proposed fee is in respect of costs and expenditures that were incurred in relation to the management and administration of financing entities and the investment asset.~~

**Charging of fees**

**8.** (1) Subject to sections [5.1], [6.1] and [7.1], in charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month;

**Commented [DS17]:** NTD: Need to specify when the base fee is payable.

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month; and

(c) the fee for costs and expenditures for a month to be payable within [x] days after the end of the month.

**Commented [DS18]:** NTD: Need to specify when the fee for costs and expenditures is payable.

(2) If the variable fee for a year is a negative amount, it shall be deducted in twelve equal monthly instalments from the base fee payable in the following year.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

Commented [DS19]: NTD: Should this be based on the average of the opening and closing balances for the applicable period (e.g. year)?

(4) For the purposes of determining the average principal amount of funding obligations under subsection (3), the formula set out in subsection 1 (2) applies with necessary modifications.
[OLC Note: Please confirm that this works.]

**Submissions to Board**

**9.1** ~~(1) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in 2018 no later than October 31, 2017.~~

Formatted: section-e

~~(2) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the fees would be charged.~~

~~(3)~~ The Financial Services Manager may, no more frequently than once in any consecutive twelve month period, make submissions to the Board to amend any base fee or variable fee~~s~~ approved by the Board, and the provisions of section [5.1]. [6.1] or [7.1], as applicable, apply in respect of the submissions.

**Board approval, general**

**10.** (1) For the purpose of determining whether to approve a proposed fee, the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee.

(2) For the purpose of determining whether to approve a proposed base fee or variable fee, the Board may consider, as it determines to be appropriate, the advice provided by third party consultants and experts. **[NTD for leg counsel: We want to retain this provision, but the Board noted that they already have this ability without needing to specifically include it here. The Board flagged the risk of an adverse interpretation in other contexts where the Board is not given explicit statutory authority to consider advice of third party consultants and experts. Can we word this ss. 10(2) in such a way that it is just "for greater clarity"?]**

**Commencement**

**11. This Regulation comes into force on the day it is filed.**

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Carlos Yep |
| **Cc:** | Ken Kandeepan; Mike Manning; James Devine; Anna Strathy; Gavin He |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 2:00:49 PM |
| **Attachments:** | Draft Fees Regulation for OPG Trust and OFHP_OFA Comments_Markup2Clean.docx |

Here's the Qs and As. Put this in a Word so people can edit easily.
John

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep
**Cc:** Ken Kandeepan ; Mike Manning ; James Devine ; Anna Strathy
**Subject:** RE: OFHP fees reg

Hi Carlos,
We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.
Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.
Thanks,
John

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

## Draft Fees Regulation for OPG Trust and OFHP

**Question 1:** On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

**OFA Comment:** OFA would defer this item to Energy and OFA staff are of the view that retroactive adjustments of the fees applying once the rates are finalized would be acceptable. This would mean that the old rates would continue to apply until the decisions are made by the OEB.

**Question 2:** Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

**OFA Comment:** OFA had indicated that the earlier proposal of 10 bps for the initial proposed base fee was too high and since then a decision to set the initial proposed base fee at 7.5 bps was made. In the draft regulation provided by Energy on October 12, 2017, the draft regulation would require the OEB to set the base fee rates based on the market comparable fees. OFA staff are of the view that there should be no references made in the draft regulation about investment vehicles listed in the Question 2 and in Question 4, including securitization vehicles, actively managed investment funds, structured investment funds, hedge funds and/or other types of structured funds. Securitization vehicles, for example, involve significant amount of work 'packaging' a large number of underlying assets into an investment structure. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

**Question 3:** Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

**OFA Comment:** OFA staff are of the view that this is acceptable if done in accordance with the Act and if appropriately audited.

**Question 4:** Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

"market comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**[NTD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

(a) the type of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

(b) the scope of the services provided,

(c) the level of the services provided, and

(d) the dollar amount of assets under management;"

**OFA Comment:** OFA staff are of the view that there should be no references made in the draft regulation about investment vehicles listed in the Question 2 and Question 4, including securitization vehicles, actively managed investment funds, structured investment funds, hedge funds and/or other types of structured funds. Securitization vehicles, for example, involve significant amount of work 'packaging' a large number of underlying assets into an investment structure. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Anna Strathy; Ken Kandeepan; Carlos Yep |
| **Cc:** | Mike Manning; James Devine |
| **Subject:** | RE: OFHP fees reg |
| **Date:** | Friday, October 13, 2017 4:49:51 PM |

---

Great, thanks Anna. Will send them on.

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 4:47 PM
**To:** John Kim ; Ken Kandeepan ; Carlos Yep
**Cc:** Mike Manning ; James Devine
**Subject:** RE: OFHP fees reg

Just on the phone with him. He's fine with it. Thank you!

**From:** John Kim
**Sent:** Friday, October 13, 2017 4:46 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Anna,

Any questions from Gadi?

John

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 4:11 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Thank you both. I've sent along to Gadi.

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 4:10 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

John is correct, the way I remember is that the idea of hiring and expert advisor was batted around at the meeting and the consensus was that the advisor's independence and the objectivity of the review would both be assured if RFP was issued by the OEB.

Thanks

Ken k

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:51 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>

**Subject:** RE: OFHP fees reg

Hi Anna,

The first bullet is correct. The part that Ken contributed was that in a meeting that arrived at 7.5 bps also concluded that the OEB would engage an outside expert for the review process. On your last bullet, your description is also my understanding.

John

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 3:42 PM
**To:** John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi John, I'm not quite as close to this as everyone else here, so before sending over to Gadi I just wanted to confirm a few things:

- From what I can tell, the drafting instructions have the base fee at 7.5 bps in 2017 and 2018, consistent with our understanding
- The base fee beyond 2018 will be reviewed by the OEB to be ensure comparability with market fees, consistent with our understanding
- There is no mention of the OEB undertaking a study (as far as I can tell) to determine comparability – is that because it's already at their discretion to do so?

Thanks, Anna

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 3:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi all,

The latest and pls. have one last look.

Anna, Ron is OK to send these along. Would it be OK with Gadi too?

Thanks,

John

---

**From:** John Kim
**Sent:** Friday, October 13, 2017 1:17 PM
**To:** Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: OFHP fees reg

Hi Carlos,

We added our comments to the draft regulation. Before sending back, I would like full review. The Qs and As will be sent shortly.

Energy staff have followed up on this (copied you and Ken on that response), reminding them of our email to them dated September 27, 2017.

Thanks,

John

---

**From:** John Kim
**Sent:** Thursday, October 12, 2017 5:27 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** FW: OFHP fees reg

Hi Ken, Carlos,
Just catching up on emails and attached see additional request related to the draft reg.
I will aim to provide draft response to the Qs below tomorrow based on our comments and CMD's, as well.
Thanks,
John

---

**From:** Katona, Keley (MOF) [mailto:Keley.Katona@ontario.ca]
**Sent:** Thursday, October 12, 2017 2:06 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
**Subject:** FW: OFHP fees reg

Hi John,
Further to my call, attached is the latest draft reg. Could you review the NTD for the OFA and also address any outstanding questions per below? This was discussed at a meeting that Gadi and Ron attended this morning and it's likely tracking to Cabinet next week with the goal of finalizing before the weekend.
Thanks,
Keley

---

**From:** Cayley, Daniel (ENERGY)
**Sent:** October-11-17 2:04 PM
**To:** Kim, John (OFA)
**Cc:** Christie, Tim (ENERGY)
**Subject:** OFHP fees reg

Hi John – our lawyers have a few questions below related to the OPG fair hydro plan fees reg that they were hoping to get your input on as soon as possible. Please let me know if you think a call with us/our lawyers would be faster than getting us written answers.

1 – On the process for establishing the base fee and variable fee, which could theoretically spill over into the year to which the new fees would apply (if OEB approval was not obtained until then), the thinking would be to have the old fees apply until the new fees were approved by the OEB, and then have a "retroactive" adjustment of the fees (retroactively adjusting them back to the beginning of the year the new fees take effect). Since the base fee and variable fee are payable monthly, the "retroactive" adjustment would be made in the month following the month in which the new fees were finalized. The question for OFA is whether it would be appropriate to have a retroactive fee adjustment.

2 – Re: discussion between OPG and OFA about what "market comparable fees", OPG has proposed that there be a requirement for five sets of fees, four of which would be fees charged by full-service managers of securitization vehicles, and the

fifth of which would be fees charged by an asset manager (or management and financial services provider) in respect of any one of pension funds, other structured investment funds, hedge funds or other similar structured funds. Does the OFA have any comments on this approach or the viability of finding five such comparators? The Board has suggested that the FSM be required to submit fee comparators but that the Board have the ability to also include comparators that it chooses (e.g. on the advice of consultants/experts it retains).

3 – Are there "market comparable fees" that allow the person charging the fees to also recover out-of-pocket costs over and above the fees?

4 – Can the OFA provide comments on the below draft definition of "market comparable fees" reads as follows (the NTDs are for OFA's input)?

arket comparable fees" means fees, expressed as a **[yearly?]** percentage rate, charged by asset managers **[or management and financial service providers?]** in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

**TD: (1) Confirm *yearly* percentage rate. (2) Confirm whether to include "or management and financial service providers". If this is to be included, what does this mean? Is it a well-recognized industry term of art?]**

pe of services provided, being services in respect of funds including **securitization vehicles**, pension funds, other **structured** investment funds, hedge funds and other similar **structured** funds, **[NTD: Confirm "securitization vehicles" and "structured".]**

ope of the services provided,

vel of the services provided, and

llar amount of assets under management;

Thanks,

Daniel

**From:** Mike Manning
**To:** "LEE John -TREASURY"
**Cc:** Ken Kandeepan
**Subject:** RE: Please give me a call re: - Protection Agreement and OPG Monday Board meeting.
**Date:** Friday, November 17, 2017 3:45:25 PM

---

Call you in a few minutes
mike

---

**From:** LEE John -TREASURY [mailto:john.s.lee@opg.com]
**Sent:** Friday, November 17, 2017 3:40 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** Please give me a call re: - Protection Agreement and OPG Monday Board meeting.

**John Lee | Vice President Treasurer |**
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

**From:** Mike Manning
**To:** Gadi Mayman; John Kim
**Cc:** Ronald Kwan; Emily Kerr; Carlos Yep; Anna Strathy
**Subject:** RE: Proposed Watay Term Sheet
**Date:** Friday, September 01, 2017 12:34:09 PM

---

A lot of the same thoughts. I asked Craig this morning to roughly calculate the value of the prepayment option (he is still working on it). Amortization premium 25 to 35 bps, although if we are not actually issuing amortizing bonds then this may be less relevant. But we also end up with huge mismatch risk as we wouldn't be issuing amortizing bonds to perfectly offset the loan which would likely greatly exceed the notional amortization premium. I wouldn't want to understate the complexity and residual risk associated with such a transaction and you have covered this off. This doesn't even cover budgetary risk. I'm hoping we can put off a final decision and not agree to proceed today with the explanation that a lot more work will be required which is definitely the case. Also, the accounting cannot be ignored. I believe the structure requires the loan and associated borrowing to offset each other to get no impact on net debt. Not sure how you package a loan with first charge assignment on the annual federal contributions when they still require annual appropriations from the Feds. Cindy would be the expert on this but expect it could take more analysis.
Mike

---

**From:** Gadi Mayman
**Sent:** Friday, September 01, 2017 11:22 AM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Emily Kerr <Emily.Kerr@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** Re: Proposed Watay Term Sheet

Thanks. That's a very good note, but I'm concerned that in an effort to be helpful to getting an important project through, we may not be as clear on the risks as we should be, and are underestimating the rate that would have to be charged on the loan (or overstating what our spread is).

Where did the 2.80% long term Ontario rate come from? Our 10-year rate is currently about 2.6% before fees and our 20 and 30-year rates are about 3.10%, so this looks like a pretty low rate given the tenor of the proposed bond.

Also this is an amortizing structure , which in the marketplace usually has at least a 25 basis point premium, and in Alan's proposal that I saw last week, he had included an option to prepay at any time without a penalty, which is a highly expensive option (ask Alan what the Bank would charge him for that feature on a 5-year mortgage, never mind a 40-year debt instrument).

A further point is that we wouldn't borrow the full $1.5 billion today, as we'd borrow and on-lend over a number of years as the project is built, so this is a future starting loan which also has a number of basis points added to it if we were to hedge the rate as soon as it would be approved be TB and agreed to with Watay.

Another question that I have is whether we'd have any additional liability or risk if the project goes over budget and needs more money - who comes up with that? Does our $1.5 billion potentially grow? What about the senior debt? I assume that this will, to be a proper financing structure, come with a lower yield than what we'd be charging to be subordinated to it, but that it would carry less risk in the case of a cost overrun on the project.

Put all that together and our spread would be considerably below the 150 basis points indicated, and the PV of the gain that we would get if the Federal government keeps making these appropriations annually for the next 40-years would be considerably the amount included in the note. Also, and this is an accounting question, I'm assuming that any provision that we'd have to take would be in this fiscal year, while the gains on the loan rate versus our cost of funds would be on an annual basis as they're realized, so I think even if we got a true spread of 150 basis points by adding in all of what I've suggested above and charging a rate that would likely be well above 5%, putting forward a big amount like $300-400 million may give TB, or other decision makers, a false sense of comfort in that that may think that we can take a provision of that size and be fiscally neutral, so we should make the timing difference on when gains and the provision would hit the Province's books.

As you can see, I'm very nervous about this structure, the potential for cost overruns and the viability of depending on the next dozen or so elected Federal governments continuing to make their annual appropriations to keep us whole. I understand the importance of this project and the need to ensure that it goes forward, but I'm very leery of the transfer of risk from the Federal government to the Ontario government. I understand their desire to not take the fiscal hit up front, but why should we take some, or much, of it in their place? Why can't the Feds, or one of their agencies like BDC, provide the loan, or a loan guarantee, like they have recently done for Nalcor in considerably larger size?

One last point that I think should be included in any note that goes up to decision makers, so they're aware of the Ontario government's full involvement in this project, is our guarantee under the ALGP, which means that we're also backing the equity injection, not just the $1.5 billion subordinated loan.

Thanks,
Gadi

Hi Gadi,

Pls. see attached draft note on the Watay term sheet, drafted by Emily's branch. Will share with Mike as we have a few questions on the spread.

We are checking with OPCD on the TBC question.

Thanks,

John

Begin forwarded message:

> **From:** "Alan Hibben" <alan.hibben@rogers.com>
> **Date:** August 30, 2017 at 4:28:13 PM EDT
> **To:** "'Kwan, Ronald \(OFA\)'" <Ronald.Kwan@ofina.on.ca>, <karen.hughes@ontario.ca>, "'Veinot, Cindy \(TBS\)'" <Cindy.Veinot@ontario.ca>
> **Cc:** <serge.imbrogno@ontario.ca>
> **Subject: FW: Proposed Watay Term Sheet**
>
> Please let me know what the next steps are here.
>
> Energy is starting to draft some form of paper for TB, but I don't want them to go far until you think this is going to work.
>
> ---
>
> **From:** Alan Hibben [mailto:alan.hibben@rogers.com]
> **Sent:** August 28, 2017 1:54 PM
> **To:** 'Laughton, Patrick (TBS)' <Patrick.Laughton@ontario.ca>
> **Cc:** 'Strathy, Anna (OFA)' <Anna.Strathy@ofina.on.ca>; 'Hosick, Sarah (TBS)' <Sarah.Hosick@ontario.ca>; 'He, Gavin (OFA)' <Gavin.He@ofina.on.ca>; 'Kwan, Ronald (OFA)' <Ronald.Kwan@ofina.on.ca>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Kandeepan, Ken (OFA)' <Ken.Kandeepan@ofina.on.ca>; 'Arbabzadeh, Nina (TBS)' <Nina.Arbabzadeh@ontario.ca>; 'Nakahara, Ken (ENERGY)' <Ken.Nakahara@ontario.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'karen.hughes@ontario.ca' <karen.hughes@ontario.ca>; 'serge.imbrogno@ontario.ca' <serge.imbrogno@ontario.ca>; Andrew Teliszewsky (andrew.teliszewsky@ontario.ca) <andrew.teliszewsky@ontario.ca>; Stephanie Aldersley (stephanie.aldersley@ieso.ca) <stephanie.aldersley@ieso.ca>; 'Nakahara, Ken (ENERGY)' <Ken.Nakahara@ontario.ca>; 'Calwell, Carolyn (ENERGY/MEDEI/MRI)'

<Carolyn.Calwell@ontario.ca>
**Subject:** Proposed Watay Term Sheet

As discussed on our telephone meeting and at my in person meeting with the ADM, Deputy and COS of Energy this morning, I attach a draft of a potential term sheet that could be considered by Ontario for the Watay Northern Grid Project.

Happy to discuss at your convenience.


Alan R. Hibben
**Shakerhill Partners Ltd.**
Alan.hibben@rogers.com
416-417-5286 (cell)
416-901-6440 (home)
705-466-2652 (farm)

Please note that my assistant
should be copied on all meeting requests:

JJ Barnett
jjbarnett@morpheusworks.ca
416-668-2663

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Cc:** | Gavin He |
| **Subject:** | RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Friday, September 22, 2017 3:44:09 PM |

Thanks Anna.
Ron

**From:** Anna Strathy
**Sent:** September-22-17 15:40
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Cc:** Gavin He
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Hi Ron, I've passed these comments on to the TB analyst, but my sense is that the window may have closed for changes.
Attached is the TB/MBC agenda for Monday's meeting, which confirms the Protection Agreement item is scheduled for 3:20 - 3:30.
Thanks, Anna

**From:** Ronald Kwan
**Sent:** Friday, September 22, 2017 2:32 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Hi Anna, Ken,
From Ken's Wednesday morning email, I thought that the interest rate range on the risk exposure on p.3 was going to be 0.8 to 1.0. Was there further direction to leave the top end higher?
Also, on page 2, why isn't the Ministry of Energy also listed as one of the entities listed as recommending the limited list of activation events?
Ron

**From:** Anna Strathy
**Sent:** September-21-17 2:16 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Ken, Mike, Ron,
The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.
The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.
I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the final agenda.
Anna

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Thursday, September 21, 2017 2:13 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.
Thanks in advance,
James Strang
416-327-2071

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy; Ronald Kwan; Mike Manning |
| **Cc:** | Gavin He |
| **Subject:** | RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Friday, September 22, 2017 3:43:56 PM |

Thanks Anna, I notice our item is "in camera" does that mean we just wait outside and be called only if there are questions
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, September 22, 2017 3:40 PM
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Cc:** Gavin He
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi Ron, I've passed these comments on to the TB analyst, but my sense is that the window may have closed for changes.
Attached is the TB/MBC agenda for Monday's meeting, which confirms the Protection Agreement item is scheduled for 3:20 - 3:30.
Thanks, Anna

---

**From:** Ronald Kwan
**Sent:** Friday, September 22, 2017 2:32 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi Anna, Ken,
From Ken's Wednesday morning email, I thought that the interest rate range on the risk exposure on p.3 was going to be 0.8 to 1.0. Was there further direction to leave the top end higher?
Also, on page 2, why isn't the Ministry of Energy also listed as one of the entities listed as recommending the limited list of activation events?
Ron

---

**From:** Anna Strathy
**Sent:** September-21-17 2:16 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Ken, Mike, Ron,
The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.
The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.
I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the

final agenda.
Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Thursday, September 21, 2017 2:13 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.
Thanks in advance,
James Strang
416-327-2071

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Gavin He |
| **Subject:** | RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Friday, September 22, 2017 3:39:34 PM |
| **Attachments:** | Scanned from a Xerox multifunction device.pdf |

Hi Ron, I've passed these comments on to the TB analyst, but my sense is that the window may have closed for changes.
Attached is the TB/MBC agenda for Monday's meeting, which confirms the Protection Agreement item is scheduled for 3:20 - 3:30.
Thanks, Anna

---

**From:** Ronald Kwan
**Sent:** Friday, September 22, 2017 2:32 AM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Cc:** Gavin He
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Hi Anna, Ken,
From Ken's Wednesday morning email, I thought that the interest rate range on the risk exposure on p.3 was going to be 0.8 to 1.0. Was there further direction to leave the top end higher?
Also, on page 2, why isn't the Ministry of Energy also listed as one of the entities listed as recommending the limited list of activation events?
Ron

---

**From:** Anna Strathy
**Sent:** September-21-17 2:16 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Ken, Mike, Ron,
The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.
The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.
I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the final agenda.
Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Thursday, September 21, 2017 2:13 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko

(MCSCS) <Lenna.Wichenko@ontario.ca>

**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.

Thanks in advance,

James Strang
416-327-2071

# TB/MBC Meeting - September 25, 2017
# TB/MBC Boardroom, 1st Floor, Frost Building South
## September 25th, 2017 3:00 PM - 6:00 PM

**Information Item**

**3:00 PM - 3:10 PM**

1. Contingency Fund Update -IN CAMERA
   TBS
   3:00 PM - 3:10 PM

**Discussion Items**

**3:10 PM - 5:00 PM**

2. Jobs and Prosperity Fund: Linamar - IN CAMERA
   MEDG
   3:10 PM - 3:20 PM

3. Provincial Protection Agreement to Support Ontario's Fair Hydro Plan implementation - IN CAMERA
   MOF
   3:20 PM - 3:30 PM

4. Proposed Legislative Amendments to the Workplace Safety and Insurance Act and other Ministry of Labour Statutes
   MOL
   3:30 PM - 3:40 PM

5. Modernizing Telehealth Ontario: Making it Easier for Ontarians to Access Health Information and Services
   MOHLTC
   3:40 PM - 3:50 PM

6. Low Carbon Economy Fund Negotiating Mandate
   MOECC
   3:50 PM - 4:05 PM

7. New Home Warranty Program Renewal (Tarion)
   MGCS
   4:05 PM - 4:20 PM

8. Financial Services Regulatory Authority of Ontario
   MOF
   4:20 PM - 4:30 PM

9. Brampton Courthouse Addition Project and Time to Trial (R v Jordan) Initiative
   MAG
   4:30 PM - 4:40 PM

10. Remuneration for the Mining and Lands Tribunal - IN CAMERA
    MAG
    4:40 PM - 4:50 PM

11. Indigenous Youth and Community Wellness Secretariat
    MIRR
    4:50 PM - 5:00 PM

**Consensus Items**

12. Ontario Small Cidery and Small Distillery Support Program - IN CAMERA
    OMAFRA

13. 2018 Budget Talks
    MOF

14. Transforming the Financial Services Tribunal into an Independent Tribunal
    MOF

15. Trillium Trust Regulation - Proceeds from Sale of Hydro One Brampton Networks Inc.
    MOF

16. Foundational Indigenous Cultural Competency Training
    MIRR

17. Short-Term Transitional Care Models to Reduce Alternate Level of Care Rates
    MOHLTC

18. Accommodations and Leasehold Improvements
    MIT

19. Transformation of Building Regulatory Services
    MMA

20. Emergency Forest Firefighting
    MNRF

21. Procurement of a Modernized Ontario Parks Reservation and Registration Service
    MNRF

22. 2017 Capital Budget Initiatives Release from Holdback
    MTCS

23. Registration Licensing System of Ontario - Carrier Solution - Maintenance, Support and Enhancement
    MTO

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Cc:** | Gavin He |
| **Subject:** | RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Friday, September 22, 2017 7:30:23 AM |

Hi Anna, Ken,
From Ken's Wednesday morning email, I thought that the interest rate range on the risk exposure on p.3 was going to be 0.8 to 1.0. Was there further direction to leave the top end higher?
Also, on page 2, why isn't the Ministry of Energy also listed as one of the entities listed as recommending the limited list of activation events?
Ron

**From:** Anna Strathy
**Sent:** September-21-17 2:16 PM
**To:** Ken Kandeepan ; Mike Manning ; Ronald Kwan
**Cc:** Gavin He
**Subject:** FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Ken, Mike, Ron,
The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.
The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.
I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the final agenda.
Anna

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Thursday, September 21, 2017 2:13 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC
Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.
Thanks in advance,
James Strang
416-327-2071

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Cc:** | Gavin He |
| **Subject:** | RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC |
| **Date:** | Friday, September 22, 2017 3:56:48 PM |

---

Hi Ken, yes, that's my understanding as well – that officials would wait in the anteroom and only be called in if there are questions – but we're just confirming that with TBS.

---

**From:** Ken Kandeepan
**Sent:** Friday, September 22, 2017 3:44 PM
**To:** Anna Strathy ; Ronald Kwan ; Mike Manning
**Cc:** Gavin He
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Thanks Anna, I notice our item is "in camera" does that mean we just wait outside and be called only if there are questions

Thanks

Ken k

---

**From:** Anna Strathy
**Sent:** Friday, September 22, 2017 3:40 PM
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi Ron, I've passed these comments on to the TB analyst, but my sense is that the window may have closed for changes.

Attached is the TB/MBC agenda for Monday's meeting, which confirms the Protection Agreement item is scheduled for 3:20 - 3:30.

Thanks, Anna

---

**From:** Ronald Kwan
**Sent:** Friday, September 22, 2017 2:32 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi Anna, Ken,

From Ken's Wednesday morning email, I thought that the interest rate range on the risk exposure on p.3 was going to be 0.8 to 1.0. Was there further direction to leave the top end higher?

Also, on page 2, why isn't the Ministry of Energy also listed as one of the entities listed as recommending the limited list of activation events?

Ron

---

**From:** Anna Strathy
**Sent:** September-21-17 2:16 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Gavin He <Gavin.He@ofina.on.ca>

**Subject:** FW: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Ken, Mike, Ron,

The latest draft of the TB Assessment note is attached. I don't expect this to change again between now and the meeting on Monday.

The TB/MBC meeting is scheduled to run from 3-6pm on Monday, September 25, 2017. While the official agenda isn't out as yet, unofficially the item is scheduled for 3:20pm. It's in the TB/MBC Boardroom first floor Frost South.

I would recommend planning to arrive just before 3:00pm. I will let you know as soon as I receive the final agenda.

Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Thursday, September 21, 2017 2:13 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>
**Subject:** RE: Provincial Protection Agreement (Fair Hydro Plan) - Sept 25 TB/MBC

Hi, attached is a revised note that includes feedback from OPCD and an additional minute following Chair's pre-brief to have a report back with the final accounting/legal/financial risk opinions.

Thanks in advance,

James Strang
416-327-2071

**From:** Ken Kandeepan
**To:** Anna Strathy; Mike Manning; Ronald Kwan
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 11:16:55 AM

---

Why don't we call together from the Exe BR
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Monday, September 18, 2017 11:07 AM
**To:** Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Malle Hanslep (MOF) ; Keley Katona (ENERGY) ; Scott Nelms (ENERGY)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Hi Toby,
Gadi is in meetings for the rest of the morning, but perhaps I could set up a call for 11:30am for a quick chat amongst those that are available on this email chain. The term sheet must be settled today as there is a meeting tomorrow with the Deputy and CoS at Energy.
I'll set up the call.
Anna

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 18, 2017 9:46 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Cc:** McKinlay, Tom (ENERGY) <SOM1.Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Please see below some preliminary comments on the Dealer's comments, in all caps after each comment.
**********

All,
We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included. THE INDENTURE

TRUSTEE WILL BE THE BENEFICIARY OF WHATEVER IS ULTIMATELY SETTLED WITH OPG. THE DEALERS CONCERNS WILL BE ADDRESSED THROUGH OPG. THE PROVINCE EXPECTS THAT THE DEALERS COMMENTS AFFECTING MARKETABILITY WILL BE GIVEN CONSIDERABLE WEIGHT.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)? THE PROVINCE'S COVENANT EXTENDS ONLY TO FINANCING ENTITY PAYMENTS WHEN DUE; NOT MORE BROADLY TO PERFORMANCE AND OTHER COVENANTS OF THE FINANCING ENTITY. ON A PROTECTION EVENT, THE PROVINCE WILL BE OBLIGATED TO PAY AMOUNTS DUE AND PAYABLE BY THE FINANCING ENTITY.
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be. SEE PARA (4) UNDER PROTECTION EVENTS.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved. THE PROVINCE IS NOT DIRECTLY INVOLVED AND SO THESE DO NOT BELONG IN THE TERM SHEET. THE PROVINCE EXPECTS THAT OPG WILL NEGOTIATE THE SPECIFIC ARRANGEMENTS SUBJECT TO THE FINANCING PLAN. AMONG OTHER THINGS, THE PROVINCE WILL WANT CONFIRMATION THAT THE STEP-UP PRICING DOES NOT RESULT IN AN ADVERSE ACCOUNTING TREATMENT OF THE TRANSACTION.
    5. The requirement that the change of law have a "material" adverse effect is not acceptable. THIS POINT IS ACKNOWLEDGED. THE PROVINCE BELIEVES THIS IS NECESSARY TO PREVENT FOOT-FAULT SCENARIOS AND OPPORTUNISTIC BEHAVIOUR.
    6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment. ACKNOWLEDGED. THE PROVINCE IS CONSIDERING ALTERNATIVES TO ADDRESS TIMELINESS CONCERNS.
    7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient. THE PROVINCE'S OBLIGATIONS WILL BE LIMITED TO PAYING SPECIFIED AMOUNTS WHEN DUE AND PAYABLE. THE COVENANT WILL NOT EXTEND TO "MISSED OPPORTUNITY", DAMAGES ON DOWNGRADE OR OTHER SIMILAR ECONOMIC CLAIMS.
    8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. THE PROVINCE'S OBLIGATION TO PAY INVOLVES A COLLATERAL OBLIGATION TO PAY THE FINANCING ENTITY'S SUBSISTING/ON-GOING PAYMENT OBLIGATIONS. THE OPTION TO ASSUME INVOLVES THE PROVINCE DIRECTLY ASSUMING THE FINANCING ENTITY'S OBLIGATIONS SO THAT THE PROVINCE, RATHER THAN THE FINANCING ENTITY, BECOMES THE PRIMARY OBLIGOR. We

also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes [SEE DISTICTION ABOVE RE COLLATERAL VS. ASSUMED PRIMARY OBLIGATION OF THE PROVINCE] all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit. THE OPTION TO STEP-IN AND DIRECTLY ASSUME THE FINANCING ENTITY'S OBLIGATIONS WOULD ALLOW THE PROVINCE TO COLLAPSE THE FINANCING ENTITY STRUCTURE AND SIMPLIFY/RATIONALIZE THE ARRANGEMENTS GOING FORWARD.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution? THE PROVINCE ANTICIPATES THAT "FINANCE AMOUNT" (AND THEREFORE THE CORRESPONDING CEAs) WILL BE LIMITED ON AN ACCELERATION TO THE AMOUNTS WHEN DUE AND PAYABLE. THE REVISED REGULATION WOULD ADDRESS THIS IN SECTION 5. THIS IS CONSISTENT WITH BONDHOLDERS' RECOURSE BEING LIMITED TO THE UNDERLYING CASHFLOWS - IN THIS CASE, MEASURED BY REFERENCE TO THE APPLICABLE "FAIR ALLOCATION AMOUNT" AS OF THE TIME OF THE BOND ISSUANCE. ACCORDINGLY, THERE SHOULD BE NO "BALLOON REPAYMENT" ON ACCELERATION OF BONDS AND SO NEED FOR A PRE-EMPTIVE OPTION.
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals. ACKNOWLEDGED. THE PROVINCE IS HOPEFUL THAT THE SCENARIO IN (b) WILL BE FEASIBLE AND INTENDS TO WORK TOWARDS A CLEAN PRE-APPROVAL ARRANGEMENT. IT IS LIKELY THAT THE PRE-APPROVAL WOULD BE BASED ON THE AGREEMENTS/TERMS BEING SUBSTANTIALLY EQUIVALENT TO A PRE-AGREED PATTERN. SINCE THAT CONCLUSION MAY INVOLVE JUDGMENTS, SOME SORT OF CONFIRMATION AT THE TIME OF AN OFFERING MAY BE REQUIRED TO DEMONSTRATE COMPLIANCE.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY

**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
5. The requirement that the change of law have a "material" adverse effect is not acceptable.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement

that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Friday, September 15, 2017 12:26:15 PM

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, September 15, 2017 12:24 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse

take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**

416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place

Toronto, Ontario, Canada  M5X 1B8

osler.com

[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Keley Katona (ENERGY); Scott Nelms (ENERGY) |
| **Subject:** | RE: Provincial Protection Agreement - Dealer Comments |
| **Date:** | Monday, September 18, 2017 11:06:42 AM |

Hi Toby,
Gadi is in meetings for the rest of the morning, but perhaps I could set up a call for 11:30am for a quick chat amongst those that are available on this email chain. The term sheet must be settled today as there is a meeting tomorrow with the Deputy and CoS at Energy.
I'll set up the call.
Anna

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 18, 2017 9:46 AM
**To:** Mike Manning ; Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Malle Hanslep (MOF) ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Anna Strathy ; Cengarle, John (MOF) ; Ronald Kwan ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Gavin He ; Hosick, Sarah (TBS)
**Cc:** McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY) ; stephen.ashbourne@blakes.com
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
Please see below some preliminary comments on the Dealer's comments, in all caps after each comment.
**********
All,
We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included. THE INDENTURE TRUSTEE WILL BE THE BENEFICIARY OF WHATEVER IS ULTIMATELY SETTLED WITH OPG. THE DEALERS CONCERNS WILL BE ADDRESSED THROUGH OPG. THE PROVINCE EXPECTS THAT THE DEALERS COMMENTS AFFECTING MARKETABILITY WILL BE GIVEN CONSIDERABLE WEIGHT.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)? THE PROVINCE'S COVENANT EXTENDS ONLY TO FINANCING ENTITY PAYMENTS WHEN DUE; NOT MORE BROADLY TO PERFORMANCE AND OTHER COVENANTS OF THE FINANCING ENTITY. ON A PROTECTION EVENT, THE PROVINCE WILL BE OBLIGATED TO PAY AMOUNTS DUE AND PAYABLE BY THE FINANCING ENTITY.
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be. SEE PARA (4) UNDER PROTECTION EVENTS.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved. THE PROVINCE IS NOT DIRECTLY INVOLVED AND SO THESE DO NOT BELONG IN THE TERM SHEET. THE PROVINCE EXPECTS THAT OPG WILL NEGOTIATE THE SPECIFIC ARRANGEMENTS SUBJECT TO THE FINANCING PLAN. AMONG OTHER THINGS, THE PROVINCE WILL WANT CONFIRMATION THAT THE STEP-UP PRICING DOES NOT RESULT IN AN ADVERSE ACCOUNTING TREATMENT OF THE TRANSACTION.
5. The requirement that the change of law have a "material" adverse effect is not acceptable. THIS POINT IS ACKNOWLEDGED. THE PROVINCE BELIEVES THIS IS NECESSARY TO PREVENT FOOT-FAULT SCENARIOS AND OPPORTUNISTIC BEHAVIOUR.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment. ACKNOWLEDGED. THE PROVINCE IS CONSIDERING ALTERNATIVES TO ADDRESS TIMELINESS CONCERNS.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient. THE PROVINCE'S OBLIGATIONS WILL BE LIMITED TO PAYING SPECIFIED AMOUNTS WHEN DUE AND PAYABLE. THE COVENANT WILL NOT EXTEND TO "MISSED OPPORTUNITY", DAMAGES ON DOWNGRADE OR OTHER SIMILAR ECONOMIC CLAIMS.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. THE PROVINCE'S OBLIGATION TO PAY INVOLVES A COLLATERAL OBLIGATION TO PAY THE FINANCING ENTITY'S SUBSISTING/ON-GOING PAYMENT OBLIGATIONS. THE OPTION TO ASSUME INVOLVES THE PROVINCE DIRECTLY ASSUMING THE FINANCING ENTITY'S OBLIGATIONS SO THAT THE PROVINCE, RATHER THAN THE FINANCING ENTITY, BECOMES THE PRIMARY OBLIGOR. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes [SEE DISTICTION ABOVE RE COLLATERAL VS. ASSUMED PRIMARY OBLIGATION OF THE PROVINCE] all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit. THE OPTION TO STEP-IN AND DIRECTLY ASSUME THE FINANCING ENTITY'S OBLIGATIONS WOULD ALLOW THE PROVINCE TO COLLAPSE THE FINANCING ENTITY STRUCTURE AND SIMPLIFY/RATIONALIZE THE ARRANGEMENTS GOING FORWARD.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is

the solution? THE PROVINCE ANTICIPATES THAT "FINANCE AMOUNT" (AND THEREFORE THE CORRESPONDING CEAs) WILL BE LIMITED ON AN ACCELERATION TO THE AMOUNTS WHEN DUE AND PAYABLE. THE REVISED REGULATION WOULD ADDRESS THIS IN SECTION 5. THIS IS CONSISTENT WITH BONDHOLDERS' RECOURSE BEING LIMITED TO THE UNDERLYING CASHFLOWS - IN THIS CASE, MEASURED BY REFERENCE TO THE APPLICABLE "FAIR ALLOCATION AMOUNT" AS OF THE TIME OF THE BOND ISSUANCE. ACCORDINGLY, THERE SHOULD BE NO "BALLOON REPAYMENT" ON ACCELERATION OF BONDS AND SO NEED FOR A PRE-EMPTIVE OPTION.

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals. ACKNOWLEDGED. THE PROVINCE IS HOPEFUL THAT THE SCENARIO IN (b) WILL BE FEASIBLE AND INTENDS TO WORK TOWARDS A CLEAN PRE-APPROVAL ARRANGEMENT. IT IS LIKELY THAT THE PRE-APPROVAL WOULD BE BASED ON THE AGREEMENTS/TERMS BEING SUBSTANTIALLY EQUIVALENT TO A PRE-AGREED PATTERN. SINCE THAT CONCLUSION MAY INVOLVE JUDGMENTS, SOME SORT OF CONFIRMATION AT THE TIME OF AN OFFERING MAY BE REQUIRED TO DEMONSTRATE COMPLIANCE.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to “payment obligations” that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include “connected” regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
5. The requirement that the change of law have a “material” adverse effect is not acceptable.
6. We do not want the phrase “in a final and non-appealable judgement” being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**From:** Whitfield, Tobias P. (MOF)
**To:** Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 10:38:31 AM

---

We are available until about 11:45 to discuss these comments before this afternoon's meeting, if you would like.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 18, 2017 9:46 AM
**To:** Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Katona, Keley (MOF); Donaldson, Mark (TBS); He, Gavin (OFA); Hosick, Sarah (TBS)
**Cc:** McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Please see below some preliminary comments on the Dealer's comments, in all caps after each comment.

**********

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included. THE INDENTURE TRUSTEE WILL BE THE BENEFICIARY OF WHATEVER IS ULTIMATELY SETTLED WITH OPG. THE DEALERS CONCERNS WILL BE ADDRESSED THROUGH OPG. THE PROVINCE EXPECTS THAT THE DEALERS COMMENTS AFFECTING MARKETABILITY WILL BE GIVEN CONSIDERABLE WEIGHT.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)? THE PROVINCE'S COVENANT EXTENDS ONLY TO FINANCING ENTITY PAYMENTS WHEN DUE; NOT MORE BROADLY TO PERFORMANCE AND OTHER COVENANTS OF THE FINANCING ENTITY. ON A PROTECTION EVENT, THE PROVINCE WILL BE OBLIGATED TO PAY AMOUNTS DUE AND PAYABLE BY THE FINANCING ENTITY.
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be. SEE PARA (4) UNDER

PROTECTION EVENTS.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved. THE PROVINCE IS NOT DIRECTLY INVOLVED AND SO THESE DO NOT BELONG IN THE TERM SHEET. THE PROVINCE EXPECTS THAT OPG WILL NEGOTIATE THE SPECIFIC ARRANGEMENTS SUBJECT TO THE FINANCING PLAN. AMONG OTHER THINGS, THE PROVINCE WILL WANT CONFIRMATION THAT THE STEP-UP PRICING DOES NOT RESULT IN AN ADVERSE ACCOUNTING TREATMENT OF THE TRANSACTION.
5. The requirement that the change of law have a "material" adverse effect is not acceptable. THIS POINT IS ACKNOWLEDGED. THE PROVINCE BELIEVES THIS IS NECESSARY TO PREVENT FOOT-FAULT SCENARIOS AND OPPORTUNISTIC BEHAVIOUR.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment. ACKNOWLEDGED. THE PROVINCE IS CONSIDERING ALTERNATIVES TO ADDRESS TIMELINESS CONCERNS.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient. THE PROVINCE'S OBLIGATIONS WILL BE LIMITED TO PAYING SPECIFIED AMOUNTS WHEN DUE AND PAYABLE. THE COVENANT WILL NOT EXTEND TO "MISSED OPPORTUNITY", DAMAGES ON DOWNGRADE OR OTHER SIMILAR ECONOMIC CLAIMS.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. THE PROVINCE'S OBLIGATION TO PAY INVOLVES A COLLATERAL OBLIGATION TO PAY THE FINANCING ENTITY'S SUBSISTING/ON-GOING PAYMENT OBLIGATIONS. THE OPTION TO ASSUME INVOLVES THE PROVINCE DIRECTLY ASSUMING THE FINANCING ENTITY'S OBLIGATIONS SO THAT THE PROVINCE, RATHER THAN THE FINANCING ENTITY, BECOMES THE PRIMARY OBLIGOR. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes [SEE DISTICTION ABOVE RE COLLATERAL VS. ASSUMED PRIMARY OBLIGATION OF THE PROVINCE] all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit. THE OPTION TO STEP-IN AND DIRECTLY ASSUME THE FINANCING ENTITY'S OBLIGATIONS WOULD ALLOW THE PROVINCE TO COLLAPSE THE FINANCING ENTITY STRUCTURE AND SIMPLIFY/RATIONALIZE THE ARRANGEMENTS GOING FORWARD.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be

pursued, it would need to be in this term sheet. If it is not the solution, what is the solution? THE PROVINCE ANTICIPATES THAT "FINANCE AMOUNT" (AND THEREFORE THE CORRESPONDING CEAs) WILL BE LIMITED ON AN ACCELERATION TO THE AMOUNTS WHEN DUE AND PAYABLE. THE REVISED REGULATION WOULD ADDRESS THIS IN SECTION 5. THIS IS CONSISTENT WITH BONDHOLDERS' RECOURSE BEING LIMITED TO THE UNDERLYING CASHFLOWS - IN THIS CASE, MEASURED BY REFERENCE TO THE APPLICABLE "FAIR ALLOCATION AMOUNT" AS OF THE TIME OF THE BOND ISSUANCE. ACCORDINGLY, THERE SHOULD BE NO "BALLOON REPAYMENT" ON ACCELERATION OF BONDS AND SO NEED FOR A PRE-EMPTIVE OPTION.

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals. ACKNOWLEDGED. THE PROVINCE IS HOPEFUL THAT THE SCENARIO IN (b) WILL BE FEASIBLE AND INTENDS TO WORK TOWARDS A CLEAN PRE-APPROVAL ARRANGEMENT. IT IS LIKELY THAT THE PRE-APPROVAL WOULD BE BASED ON THE AGREEMENTS/TERMS BEING SUBSTANTIALLY EQUIVALENT TO A PRE-AGREED PATTERN. SINCE THAT CONCLUSION MAY INVOLVE JUDGMENTS, SOME SORT OF CONFIRMATION AT THE TIME OF AN OFFERING MAY BE REQUIRED TO DEMONSTRATE COMPLIANCE.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John - TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement

will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
5. The requirement that the change of law have a "material" adverse effect is not acceptable.
6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Mark Donaldson (MOF); Gavin He; Hosick, Sarah (TBS) |
| **Cc:** | McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); stephen.ashbourne@blakes.com |
| **Subject:** | RE: Provincial Protection Agreement - Dealer Comments |
| **Date:** | Monday, September 18, 2017 9:46:47 AM |

Please see below some preliminary comments on the Dealer's comments, in all caps after each comment.

**********

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included. THE INDENTURE TRUSTEE WILL BE THE BENEFICIARY OF WHATEVER IS ULTIMATELY SETTLED WITH OPG. THE DEALERS CONCERNS WILL BE ADDRESSED THROUGH OPG. THE PROVINCE EXPECTS THAT THE DEALERS COMMENTS AFFECTING MARKETABILITY WILL BE GIVEN CONSIDERABLE WEIGHT.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)? THE PROVINCE'S COVENANT EXTENDS ONLY TO FINANCING ENTITY PAYMENTS WHEN DUE; NOT MORE BROADLY TO PERFORMANCE AND OTHER COVENANTS OF THE FINANCING ENTITY. ON A PROTECTION EVENT, THE PROVINCE WILL BE OBLIGATED TO PAY AMOUNTS DUE AND PAYABLE BY THE FINANCING ENTITY.
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be. SEE PARA (4) UNDER PROTECTION EVENTS.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved. THE PROVINCE IS NOT DIRECTLY INVOLVED AND SO THESE DO NOT BELONG IN THE TERM SHEET. THE PROVINCE EXPECTS THAT OPG WILL NEGOTIATE THE SPECIFIC ARRANGEMENTS SUBJECT TO THE FINANCING PLAN. AMONG OTHER THINGS, THE PROVINCE WILL WANT CONFIRMATION THAT THE STEP-UP PRICING DOES NOT RESULT IN AN ADVERSE ACCOUNTING TREATMENT OF THE TRANSACTION.
5. The requirement that the change of law have a "material" adverse effect is not acceptable. THIS POINT IS ACKNOWLEDGED. THE PROVINCE BELIEVES THIS IS NECESSARY TO PREVENT FOOT-FAULT SCENARIOS AND OPPORTUNISTIC BEHAVIOUR.

6. We do not want the phrase “in a final and non-appealable judgement” being included in the ultra vires provision. Investors will be looking for timely payment. ACKNOWLEDGED. THE PROVINCE IS CONSIDERING ALTERNATIVES TO ADDRESS TIMELINESS CONCERNS.
7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient. THE PROVINCE’S OBLIGATIONS WILL BE LIMITED TO PAYING SPECIFIED AMOUNTS WHEN DUE AND PAYABLE. THE COVENANT WILL NOT EXTEND TO “MISSED OPPORTUNITY”, DAMAGES ON DOWNGRADE OR OTHER SIMILAR ECONOMIC CLAIMS.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. THE PROVINCE’S OBLIGATION TO PAY INVOLVES A COLLATERAL OBLIGATION TO PAY THE FINANCING ENTITY’S SUBSISTING/ON-GOING PAYMENT OBLIGATIONS. THE OPTION TO ASSUME INVOLVES THE PROVINCE DIRECTLY ASSUMING THE FINANCING ENTITY’S OBLIGATIONS SO THAT THE PROVINCE, RATHER THAN THE FINANCING ENTITY, BECOMES THE PRIMARY OBLIGOR. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes [SEE DISTICTION ABOVE RE COLLATERAL VS. ASSUMED PRIMARY OBLIGATION OF THE PROVINCE] all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit. THE OPTION TO STEP-IN AND DIRECTLY ASSUME THE FINANCING ENTITY’S OBLIGATIONS WOULD ALLOW THE PROVINCE TO COLLAPSE THE FINANCING ENTITY STRUCTURE AND SIMPLIFY/RATIONALIZE THE ARRANGEMENTS GOING FORWARD.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution? THE PROVINCE ANTICIPATES THAT “FINANCE AMOUNT” (AND THEREFORE THE CORRESPONDING CEAs) WILL BE LIMITED ON AN ACCELERATION TO THE AMOUNTS WHEN DUE AND PAYABLE. THE REVISED REGULATION WOULD ADDRESS THIS IN SECTION 5. THIS IS CONSISTENT WITH BONDHOLDERS’ RECOURSE BEING LIMITED TO THE UNDERLYING CASHFLOWS - IN THIS CASE, MEASURED BY REFERENCE TO THE APPLICABLE “FAIR ALLOCATION AMOUNT” AS OF THE TIME OF THE BOND ISSUANCE. ACCORDINGLY, THERE SHOULD BE NO “BALLOON REPAYMENT” ON ACCELERATION OF BONDS AND SO NEED FOR A PRE-EMPTIVE OPTION.
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection

will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals. ACKNOWLEDGED. THE PROVINCE IS HOPEFUL THAT THE SCENARIO IN (b) WILL BE FEASIBLE AND INTENDS TO WORK TOWARDS A CLEAN PRE-APPROVAL ARRANGEMENT. IT IS LIKELY THAT THE PRE-APPROVAL WOULD BE BASED ON THE AGREEMENTS/TERMS BEING SUBSTANTIALLY EQUIVALENT TO A PRE-AGREED PATTERN. SINCE THAT CONCLUSION MAY INVOLVE JUDGMENTS, SOME SORT OF CONFIRMATION AT THE TIME OF AN OFFERING MAY BE REQUIRED TO DEMONSTRATE COMPLIANCE.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John - TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a “material” adverse effect is not acceptable.
6. We do not want the phrase “in a final and non-appealable judgement” being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 9:45:36 AM

---

HI Mike,

I am copying in Steve in case he is available to discuss this with you. Toby is going to pass on some preliminary comments to you.

Thanks.

Malle

-----Original Message-----
From: Hanslep, Malle (MOF)
Sent: September 18, 2017 9:32 AM
To: Manning, Mike (OFA)
Cc: Whitfield, Tobias P. (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Hi Mike,

We are free between 10:30 and 11:45 to discuss.

Malle

-----Original Message-----
From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 18, 2017 9:00 AM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Hi Malle:
We have scheduled 3:00 in the Executive Boardroom at the OFA. I'll try and reach you this morning to get some colour on a few issues. If you could pass along time and coordinates that would be appreciated. Sorry for the confusion, but meeting has been arranged by both OPG and the OFA and has been a bit messy in terms of arranging.

Thanks, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, September 18, 2017 8:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Provincial Protection Agreement - Dealer Comments

Have we heard that the meeting is confirmed for today and it's location?

Also Blakes had some preliminary comments on these

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning

Sent: Friday, September 15, 2017 12:39
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Not too surprised. Lots of issues to be ultimately dealt with. I'm hoping we can get an Agenda for the meeting to keep things on track.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:27 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Provincial Protection Agreement - Dealer Comments

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 15, 2017 12:26 PM
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:24 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Subject: FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: September 15, 2017 12:11 PM
To: Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
Subject: Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate." Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter
[cid:image001.gif@01D32E1F.56395C60]

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com<mailto:pmilligan@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada  M5X 1B8

[cid:image002.gif@01D32E1F.56395C60][osler.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.osler.com_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=lFue48smBIJ-HYEaxAuO8Vf66sgXMA3BM66jfXTe-Bg&s=iq5Laua4v1urCmIWnQQM37H43D3tkqT6yqa-WKunIYs&e=>

_____

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 9:32:01 AM

---

Hi Mike,

We are free between 10:30 and 11:45 to discuss.

Malle

-----Original Message-----
From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 18, 2017 9:00 AM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Hi Malle:
We have scheduled 3:00 in the Executive Boardroom at the OFA. I'll try and reach you this morning to get some colour on a few issues. If you could pass along time and coordinates that would be appreciated. Sorry for the confusion, but meeting has been arranged by both OPG and the OFA and has been a bit messy in terms of arranging.

Thanks, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, September 18, 2017 8:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Provincial Protection Agreement - Dealer Comments

Have we heard that the meeting is confirmed for today and it's location?

Also Blakes had some preliminary comments on these

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 15, 2017 12:39
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Not too surprised. Lots of issues to be ultimately dealt with. I'm hoping we can get an Agenda for the meeting to keep things on track.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:27 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Provincial Protection Agreement - Dealer Comments

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 15, 2017 12:26 PM
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:24 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Subject: FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: September 15, 2017 12:11 PM
To: Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
Subject: Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate." Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter
[cid:image001.gif@01D32E1F.56395C60]

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com<mailto:pmilligan@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada  M5X 1B8

[cid:image002.gif@01D32E1F.56395C60][osler.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.osler.com_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=lFue48smBIJ-HYEaxAuO8Vf66sgXMA3BM66jfXTe-Bg&s=iq5Laua4v1urCmIWnQQM37H43D3tkqT6yqa-WKunIYs&e=>

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 8:59:34 AM

---

Hi Malle:
We have scheduled 3:00 in the Executive Boardroom at the OFA. I'll try and reach you this morning to get some colour on a few issues. If you could pass along time and coordinates that would be appreciated. Sorry for the confusion, but meeting has been arranged by both OPG and the OFA and has been a bit messy in terms of arranging.

Thanks, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, September 18, 2017 8:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Provincial Protection Agreement - Dealer Comments

Have we heard that the meeting is confirmed for today and it's location?

Also Blakes had some preliminary comments on these

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 15, 2017 12:39
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Not too surprised. Lots of issues to be ultimately dealt with. I'm hoping we can get an Agenda for the meeting to keep things on track.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:27 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Provincial Protection Agreement - Dealer Comments

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 15, 2017 12:26 PM
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:24 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Subject: FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: September 15, 2017 12:11 PM
To: Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
Subject: Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate." Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive

damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter
[cid:image001.gif@01D32E1F.56395C60]

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com<mailto:pmilligan@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[cid:image002.gif@01D32E1F.56395C60][osler.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.osler.com_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=lFue48smBIJ-HYEaxAuO8Vf66sgXMA3BM66jfXTe-Bg&s=iq5Laua4v1urCmIWnQQM37H43D3tkqT6yqa-WKunIYs&e=>

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Friday, September 15, 2017 12:39:00 PM

---

Not too surprised. Lots of issues to be ultimately dealt with. I'm hoping we can get an Agenda for the meeting to keep things on track.
Mike

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, September 15, 2017 12:27 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

---

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** September 15, 2017 12:26 PM
**To:** Hanslep, Malle (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, September 15, 2017 12:24 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a

process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**

416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Subject:** RE: Provincial Protection Agreement - Dealer Comments
**Date:** Friday, September 15, 2017 12:27:07 PM

---

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** September 15, 2017 12:26 PM
**To:** Hanslep, Malle (MOF)
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, September 15, 2017 12:24 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John - TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have

been resolved.

5. The requirement that the change of law have a “material” adverse effect is not acceptable.
6. We do not want the phrase “in a final and non-appealable judgement” being included in the *ultra vires* provision. Investors will be looking for timely payment.
7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**
416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com
[osler.com]

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Mike Manning; Ronald Kwan |
| **Subject:** | RE: Provincial Protection Agreement - Dealer Comments |
| **Date:** | Monday, September 18, 2017 11:25:51 AM |

Anis booked the Capital Markets Boardroom

---

**From:** Ken Kandeepan
**Sent:** Monday, September 18, 2017 11:17 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Why don't we call together from the Exe BR

Thanks

Ken k

---

**From:** Anna Strathy
**Sent:** Monday, September 18, 2017 11:07 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Hi Toby,

Gadi is in meetings for the rest of the morning, but perhaps I could set up a call for 11:30am for a quick chat amongst those that are available on this email chain. The term sheet must be settled today as there is a meeting tomorrow with the Deputy and CoS at Energy.

I'll set up the call.

Anna

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Monday, September 18, 2017 9:46 AM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Ronald Kwan

<Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Cc:** McKinlay, Tom (ENERGY) <SOM1.Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; stephen.ashbourne@blakes.com
**Subject:** RE: Provincial Protection Agreement - Dealer Comments

Please see below some preliminary comments on the Dealer's comments, in all caps after each comment.

**********

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included. THE INDENTURE TRUSTEE WILL BE THE BENEFICIARY OF WHATEVER IS ULTIMATELY SETTLED WITH OPG. THE DEALERS CONCERNS WILL BE ADDRESSED THROUGH OPG. THE PROVINCE EXPECTS THAT THE DEALERS COMMENTS AFFECTING MARKETABILITY WILL BE GIVEN CONSIDERABLE WEIGHT.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)? THE PROVINCE'S COVENANT EXTENDS ONLY TO FINANCING ENTITY PAYMENTS WHEN DUE; NOT MORE BROADLY TO PERFORMANCE AND OTHER COVENANTS OF THE FINANCING ENTITY. ON A PROTECTION EVENT, THE PROVINCE WILL BE OBLIGATED TO PAY AMOUNTS DUE AND PAYABLE BY THE FINANCING ENTITY.

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be. SEE PARA (4) UNDER PROTECTION EVENTS.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved. THE PROVINCE IS NOT DIRECTLY INVOLVED AND SO THESE DO NOT

BELONG IN THE TERM SHEET. THE PROVINCE EXPECTS THAT OPG WILL NEGOTIATE THE SPECIFIC ARRANGEMENTS SUBJECT TO THE FINANCING PLAN. AMONG OTHER THINGS, THE PROVINCE WILL WANT CONFIRMATION THAT THE STEP-UP PRICING DOES NOT RESULT IN AN ADVERSE ACCOUNTING TREATMENT OF THE TRANSACTION.

5. The requirement that the change of law have a "material" adverse effect is not acceptable. THIS POINT IS ACKNOWLEDGED. THE PROVINCE BELIEVES THIS IS NECESSARY TO PREVENT FOOT-FAULT SCENARIOS AND OPPORTUNISTIC BEHAVIOUR.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment. ACKNOWLEDGED. THE PROVINCE IS CONSIDERING ALTERNATIVES TO ADDRESS TIMELINESS CONCERNS.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient. THE PROVINCE'S OBLIGATIONS WILL BE LIMITED TO PAYING SPECIFIED AMOUNTS WHEN DUE AND PAYABLE. THE COVENANT WILL NOT EXTEND TO "MISSED OPPORTUNITY", DAMAGES ON DOWNGRADE OR OTHER SIMILAR ECONOMIC CLAIMS.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. THE PROVINCE'S OBLIGATION TO PAY INVOLVES A COLLATERAL OBLIGATION TO PAY THE FINANCING ENTITY'S SUBSISTING/ON-GOING PAYMENT OBLIGATIONS. THE OPTION TO ASSUME INVOLVES THE PROVINCE DIRECTLY ASSUMING THE FINANCING ENTITY'S OBLIGATIONS SO THAT THE PROVINCE, RATHER THAN THE FINANCING ENTITY, BECOMES THE PRIMARY OBLIGOR. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes [SEE DISTICTION ABOVE RE COLLATERAL VS. ASSUMED PRIMARY OBLIGATION OF THE PROVINCE] all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit. THE OPTION TO STEP-IN AND DIRECTLY ASSUME THE FINANCING ENTITY'S OBLIGATIONS WOULD ALLOW THE PROVINCE TO COLLAPSE THE FINANCING ENTITY STRUCTURE AND SIMPLIFY/RATIONALIZE THE ARRANGEMENTS GOING FORWARD.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be

pursued, it would need to be in this term sheet. If it is not the solution, what is the solution? THE PROVINCE ANTICIPATES THAT "FINANCE AMOUNT" (AND THEREFORE THE CORRESPONDING CEAs) WILL BE LIMITED ON AN ACCELERATION TO THE AMOUNTS WHEN DUE AND PAYABLE. THE REVISED REGULATION WOULD ADDRESS THIS IN SECTION 5. THIS IS CONSISTENT WITH BONDHOLDERS' RECOURSE BEING LIMITED TO THE UNDERLYING CASHFLOWS - IN THIS CASE, MEASURED BY REFERENCE TO THE APPLICABLE "FAIR ALLOCATION AMOUNT" AS OF THE TIME OF THE BOND ISSUANCE. ACCORDINGLY, THERE SHOULD BE NO "BALLOON REPAYMENT" ON ACCELERATION OF BONDS AND SO NEED FOR A PRE-EMPTIVE OPTION.

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals. ACKNOWLEDGED. THE PROVINCE IS HOPEFUL THAT THE SCENARIO IN (b) WILL BE FEASIBLE AND INTENDS TO WORK TOWARDS A CLEAN PRE-APPROVAL ARRANGEMENT. IT IS LIKELY THAT THE PRE-APPROVAL WOULD BE BASED ON THE AGREEMENTS/TERMS BEING SUBSTANTIALLY EQUIVALENT TO A PRE-AGREED PATTERN. SINCE THAT CONCLUSION MAY INVOLVE JUDGMENTS, SOME SORT OF CONFIRMATION AT THE TIME OF AN OFFERING MAY BE REQUIRED TO DEMONSTRATE COMPLIANCE.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Milligan, Peter [mailto:PMilligan@osler.com]
**Sent:** September 15, 2017 12:11 PM
**To:** Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
**Subject:** Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like

to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a

provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

OSLER

**Peter Milligan**

416.862.6634 DIRECT
416.862.6666 FACSIMILE
pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Gadi Mayman; Gavin He |
| **Subject:** | RE: Provincial Protection Agreement - Final |
| **Date:** | Tuesday, September 19, 2017 5:05:09 PM |

---

The briefing is confirmed for Thursday morning at 9am.

**From:** Anna Strathy
**Sent:** Tuesday, September 19, 2017 1:50 PM
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Cc:** Gadi Mayman ; Gavin He
**Subject:** FW: Provincial Protection Agreement - Final

FYI, final TB submission package attached. The DM/Minister briefing has been scheduled for Thursday morning at 9am; however, I'm looking to have it moved to today or tomorrow to accommodate Gadi's schedule. I'll be in touch if we are successful in rescheduling.

**From:** Anna Strathy
**Sent:** Tuesday, September 19, 2017 1:46 PM
**To:** Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Cc:** David McLean (MOF) <David.McLean@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Provincial Protection Agreement - Final

Jonathan, Keley, Anthony,

Please find attached the final TB submission for the Provincial Protection Agreement tracking to TB/MBC on September 25. The first attachment (v9_clean) includes the submission, term sheet (in appendix), OIC, s. 28 and slide deck.

I'm bringing the hard copy package over to Legal for signature and then will drop it off to Jonathan. Note, Keley will share with Energy. A track change version (from the version the Minister of Energy already signed) is attached for Keley's reference.

Anthony, I take it you will be bringing the TB20 form to the briefing for the Minister to sign?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Hill, Krista (khill@torys.com); "STEPHEN.ASHBOURNE@blakes.com"; "LEE John -TREASURY"; "mfeldman@torys.com"; rramchandani@torys.com; RYFA Ken -TREASURY |
| **Cc:** | Gavin He; Hosick, Sarah (TBS); Cengarle, John (MOF); John Kim; Anna Strathy; Malle Hanslep (MOF); Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); Mike Manning; Gadi Mayman; Mark Donaldson (MOF); Keley Katona (ENERGY); Tom McKinlay (MAG); Thouin, Alena (ENERGY) |
| **Subject:** | RE: Provincial Protection Agreement |
| **Date:** | Thursday, September 14, 2017 5:00:15 PM |
| **Attachments:** | Term Sheet - Provincial Support Agreement - Sept 14.DOCX |

Please find attached a revised version of the Protection Agreement term sheet based on our conversation this morning.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**<u>Provincial Protections and Assurances</u>**

**<u>Indicative Term Sheet</u>**

**<u>Ontario Fair Hydro Plan Act, 2017</u>**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Ramchandani, Rima |
| **To:** | Tobias P. Whitfield (MOF); Hill, Krista; "STEPHEN.ASHBOURNE@blakes.com"; "LEE John -TREASURY"; Feldman, Michael; RYFA Ken -TREASURY |
| **Cc:** | Gavin He; Hosick, Sarah (TBS); Cengarle, John (MOF); John Kim; Anna Strathy; Malle Hanslep (MOF); Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); Mike Manning; Gadi Mayman; Mark Donaldson (MOF); Keley Katona (ENERGY); Tom McKinlay (MAG); Thouin, Alena (ENERGY); "Milligan, Peter"; Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Ramchandani, Rima; Mansoori, Nina; Emes, Aaron |
| **Subject:** | RE: Provincial Protection Agreement |
| **Date:** | Thursday, September 14, 2017 6:41:06 PM |
| **Attachments:** | OPG_Torys_Comments(14_9_17).pdf<br>Term Sheet - Provincial Support Agreement - Sept 14.docx |

Thank you Toby. Attached are a few comments from Torys on your re-draft of the term sheet (clean and blacklined to your version – please note that the formatting is not always clear on the blackline but the clean version is fine). One minor note on our comments – you will see that we reinserted the words "or amends" in para (C) of the definition of a Protection Event. If this was deleted because you view this as already being covered in para (D), then we are OK with the deletion.

Please note that the attached only represents Torys comments and does not reflect input from the dealers/Osler. we have sent the Osler Team your re-draft of the term sheet for their review and consideration and, in the interests of time, are cc'ing them on this email so they can also see our comments.

Best,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-14-17 5:00 PM
**To:** Hill, Krista ; 'STEPHEN.ASHBOURNE@blakes.com' ; 'LEE John -TREASURY' ; Feldman, Michael ; Ramchandani, Rima ; RYFA Ken -TREASURY
**Cc:** He, Gavin (OFA) ; Hosick, Sarah (TBS) ; Cengarle, John (MOF) ; Kim, John (OFA) ; Strathy, Anna (OFA) ; Hanslep, Malle (MOF) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Nelms, Scott (MOF) ; Manning, Mike (OFA) ; Mayman, Gadi (OFA) ; Donaldson, Mark (TBS) ; Katona, Keley (MOF) ; McKinlay, Tom (ENERGY) ; Thouin, Alena (ENERGY)
**Subject:** RE: Provincial Protection Agreement

Please find attached a revised version of the Protection Agreement term sheet based on our conversation this morning.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca

Phone: 416-325-1456

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(B) (2) the Legislature enacts or amends any other statute;<br>(C) (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) **or amends** the Regulation made under the Act or any portion thereof; or<br>(D) (4) the Lieutenant Governor in Council, a minister of the Crown, an |

| | |
|---|---|
| | official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(E) (5) there is a change in the organization or structure of the IESO or Ontario's **electricity** market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>(F) in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims **in accordance with their terms**, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(G) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims **in accordance with their terms**. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| | security interest in each related investment interest and related property of the Financing Entity. |
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on September-14-17 6:11:55 PM

| Input: | |
|---|---|
| Document 1 ID | interwovenSite://INVENTORYS1/TorysAtWork/24132300/1 |
| Description | #24132300v1<TorysAtWork> - Term Sheet - Provincial Support Agreement - Sept 14 |
| Document 2 ID | interwovenSite://INVENTORYS1/TorysAtWork/24132300/2 |
| Description | #24132300v2<TorysAtWork> - Term Sheet - Provincial Support Agreement - Sept 14 |
| Rendering set | strikeout-colour |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| <~~*Moved from*~~> | |
| >*Moved to*< | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 7 |
| Deletions | 2 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 9 |

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims in accordance with their terms, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][1] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims in accordance with their terms. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |

[1] Under consideration to assess the marketability implications of this phrase.

| | |
|---|---|
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy; Ken Kandeepan; Mike Manning |
| **Subject:** | RE: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Monday, November 13, 2017 6:36:37 PM |

Hi Anna,

Would you be setting up this meeting, and, as discussed last week, would Energy policy staff be attending so that we can get an Energy policy view on some of the key outstanding items with respect to the legal agreements?

Ron

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** November-13-17 11:35 AM

**To:** Tobias P. Whitfield (MOF) ; Anna Strathy ; Gadi Mayman ; Ken Kandeepan ; Veinot, Cindy (TBS) ; Mike Manning ; Ronald Kwan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Cengarle, John (MOF) ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Usman Zahid ; Anis Hirani ; John Kim ; Tom McKinlay (MAG) ; Thouin, Alena (ENERGY) ; 'stephen.ashbourne@blakes.com' ; Hresa Gavaris ; John Psinas ; Steen Hume (CAB) ; Daniel Cayley (ENERGY)

**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.

Malle

---

**From:** Whitfield, Tobias P. (MOF)

**Sent:** November-10-17 2:00 PM

**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)

**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Tobias P. Whitfield (MOF); Anna Strathy; Gadi Mayman; Ken Kandeepan; Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Subject:** | RE: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Monday, November 13, 2017 11:35:38 AM |

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration.

Thanks.

Malle

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November-10-17 2:00 PM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas; Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Subject:** | RE: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Friday, November 10, 2017 2:00:30 PM |
| **Attachments:** | 23239361-vpdf-CLPA - Process Agreement.pdf<br>23239360-vpdf-CLPA - Protection Agreement.pdf<br>23239360-vpdf-CLPA - Protection Agreement.pdf<br>23239361-vpdf-CLPA - Process Agreement.pdf |

---

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER][1]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] Province to consider whether liability of OPG should be primary, or subject to the inherent limitations (e.g., duty/standard of care) implied by its role as FSM. Primary responsibility for the 'behind the scenes obligations' contemplated in this Process Agreement would be more meaningful to the extent that potential corporate liability promotes compliance .

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")~~,~~[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.~~1~~[2]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~[the FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~[the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~[the FSM] has agreed to perform and assurances ~~OPG~~[the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~[the FSM], and of the Province in accordance with the Act, have been done.

~~1~~[2] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, [except in each case as referenced in the definition of Protection Event];

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the ~~Financing Entity or the~~ Financing Entity ~~Trustee~~**

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the [FSM, as agent of the][3] Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

[3] Validity considerations if FSM effects primary agreements that in turn define the scope of its authority.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF ~~OPG~~THE FSM

**2.01 Deliveries to the Province**[4]

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~or replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.~~[2]

[4] Province to consider OPG's proposed deletion of fallback (non-PILs) access to tax information for the Trust.

[2] ~~Note: The tax documents to be provided to the Province are under consideration.~~

**2.02 Covenants**

(a) ~~OPG shall, as the FSM,~~The FSM shall [use commercially reasonable efforts to][5] cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of ~~(1) the Administrative Agent under the Administrative Services Agreement; or (2)~~ the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

[5] Province to consider lower standard for compliance proposed by OPG, particularly (ii) to (v).

(H) voluntarily dissolve or liquidate.

(b) ~~OPG~~The [FSM shall use commercially reasonable efforts to][6]:

(i) comply, and ~~as the FSM~~to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

(c) [Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.][7]

[6] Province to consider lower standard for compliance proposed by OPG.

[7] Province to consider interaction of this Agreement with the OPG indemnity. To the extent that OPG is indemnified, the impact of OPG non-compliance is significantly reduced to the extent that liability considerations are relevant to OPG.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

~~OPG~~The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~OPG~~the FSM (or their respective designees, provided that such designees are also executive officers of ~~OPG~~the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection

Agreement Maximum~~.~~; [for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement].[8]

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d~~)(ii~~) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~the FSM; and

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~e~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~the FSM.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation [that would be adverse to the Issuer][9], including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters;

[8] This requires further consideration. This could cut both ways to the extent non-CAD deals are done and the FX is hedged.

[9] Province to consider if OPG should be empowered to make this qualitative judgment on behalf of the Province.

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum[10]

~~(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"). ~~In determining the initial Protection Agreement~~

[10] Province to consider OPG's proposal for Program Agreement Maximum. In effect, the discretion of the Province is removed and the limiter is tied directly to OPG's forecast (to be consistent with the financing plan required by the Act). This means that the Province has no independent escape hatch to limit its potential fiscal exposure under the Protection Agreement. As discussed, the actual exposure will depend on the determinations to use the IESO sale mechanics to fund shortfalls – in other words, if IESO were to not sell investment interests, then the corresponding funding obligations subject to the Protection Agreement would not arise. Note that the financing plan is almost entirely within OPG's discretion and is based on long-term estimates that assume maximum use of the IESO sale mechanics. Has the Province confirmed that committing to this arrangement for the term (30 years) of the OFHPA, without a limiter that is within the Province's control, will not result in a huge contingent liability being booked in the Province's accounts (i.e., maximum fundings for 30 years)? Has the Province determined whether there are other internal governance reasons to require an escape hatch for the purposes of its fiscal management purposes? Note that Protection Events are not all within the Government's control (e.g., *ultra vires* and invalidity issues).

Maximum, the Province may have regard to (but not be bound by); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast.

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will beNot more than [■] Business Days following receipt of any further Forecast and notice of the revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the deliveryfrom OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which will be conclusive evidence that such newdisagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will apply until it may be further sobe revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of ~~OPG~~the FSM

~~OPG~~The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall [use commercially reasonable efforts to] cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

~~(b)~~ [OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

~~(c)~~ OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.][11]

(c) ~~(d)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of ~~OPG~~[the Financing Entity enforceable against ~~OPG~~the Financing Entity][12] in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) ~~(e)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental

[11] Province to consider carve back of OPG reps and liability issues with role as FSM only.
[12] Focus was on OPG. They shifted it to the Trust.

Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(e) [There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.][13]

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) [Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.][14]

(i) [No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or

[13] Province to consider carve back of OPG reps and liability issues with role as FSM only.
[14] Deleted by OPG. Province to consider.

any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.][15]

## 5.02 Representations and Warranties of the Province[16]

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

# ARTICLE VI
# ELECTION[17] TO ASSUME APPROVED OBLIGATIONS[18]

## 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) ~~to~~ elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to ~~OPG~~the FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify

[15] Deleted by OPG. Province to consider.

[16] Province to consider OPG's request for these representations. Does the Province make these sorts of representations in a commercial agreement? To the extent that the Province makes a statement (such as 5.02(d)) that is not caveated by the usual considerations applicable to a Crown obligation, the parallel rep requested in the Protection Agreement could be held out as a misstatement and itself provoke a "Protection Event" – suggesting that these sorts of "nice to have" reps from the Province will be more work (and potentially dangerous) than they are worth.

[17] Province to consider OPG's proposal to move Art VI to the Protection Agreement. The approach taken originally was motivated by the desire to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee), but should otherwise be fine in principle.

[18] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to ~~OPG~~the FSM (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Notice to ~~OPG~~the FSM, ~~OPG~~the FSM shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[19]

[19] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured. Province: We can be guided by OPG on this, but it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations. Ultimately, this is a mechanics point.

### 6.03 Settlement of Terms

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

### 6.04 Cooperation to Implement the Assignment and Assumption

~~OPG~~The FSM shall cooperate with the Province and~~, as FSM,~~ will [use commercially reasonable efforts to][20] cause the Financing Entity to cooperate, and~~ each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.~~3~~[21]

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~the FSM~~,~~ will use commercially reasonable efforts to cause the Financing Entity to, [use commercially reasonably efforts to] ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~.~~[4], other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[22]

[20] Province to consider scope of commitment.

~~3~~[21] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

~~4~~[22] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~the FSM under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~[which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach][23];

(b) any representation or warranty made by ~~OPG~~the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made [and, if curable, is not cured within sixty (60) days after written notice by the Province to the FSM of such misrepresentation][24]; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.][25]**

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

[23] Province to consider proposed 60 day cure period. This is an extraordinary suggestion and if accepted would greatly weaken the Province's ability to address a problem in the unlikely event one comes up with OPG.

[24] Extraordinary suggestion by OPG – weakens Province.

[25] This should be considered. If true, it is unclear why that should make a difference – in terms of enabling the Province to cut-off its forward obligations in the event of a fundamental problem or circumstance (change of control) that leads to a replacement of OPG as FSM.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 ~~Confidentiality~~[5] Intentionally Deleted[26]**

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[5][26] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.][Province: That circle should still be protected through carve-outs from ordinary non-disclosure terms and conditions. Province to consider if confidentiality is a concern. It was included as a consideration in the term sheet.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [SOLELY][27] AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

[27] Unusual. OPG is trying to incorporate inherent limitations applicable to an agency relationship.

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN~~FAIR HYDRO TRUST, BY ITS ~~CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]~~MANAGER, ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____

Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means ~~[■]~~Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~[referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

~~**(form of Assumption Agreement to be attached, once settled)**~~

Document comparison by Workshare Compare on Friday, November 10, 2017 12:51:18 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/7 |
| Description | TOR_2528-#23239361-v7-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/9 |
| Description | TOR_2528-#23239361-v9-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 181 |
| Deletions | 121 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 306 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**FAIR HYDRO TRUST[1], BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE]BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

[1] "Trustee" is the "legal entity". Trustee itself should sign all primary documents to make "manager" delegation meaningful and to avoid invalidating the Trust as a "trust".

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]**~~Ontario Power Generation Inc., as the ~~Financing Entity Trustee~~Manager and in its capacity as ~~trustee of the **[FINANCING ENTITY]**~~Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The FSM, as agent of the Financing Entity Trustee, in its capacity as trustee of the Financing Entity ~~in its capacity as Financing Entity Trustee,~~ and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[2] See OFHPA, definition of "financing entity". FSM to establish or cause to be established. Needed for authority under OFHPA 5(3), among other things.

~~OPG~~The FSM[3] and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the ~~Financing Entity Trustee, the~~ FSM[4] and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, [except in each case as referenced in the definition of Protection Event][5];

[3] Need to confirm parties to the Process Agreement. OPG, acting as FSM, implies potential limitation on OPG's liability.
[4] Deletion of the Trust as a party is unacceptable since would impact Province's rights against Trust's assets (e.g., as a subrogee).
[5] Covered in preamble, so delete.

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

### 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.[6]

### 1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province

[6] Enforcement of the Limited Guarantee under this Agreement must be limited to enforcement by the Indenture Trustee on behalf of the Beneficiaries. The Trust Indenture should deal with the manner and limitations on the Indenture Trustee's actions with respect to enforcement.

with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

### 1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.[7]

### 1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other ~~agreement~~Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. [To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.][8]

### 1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

### 1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

### 1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable

[7] There is no intention to provide a separate cause of action for individual Beneficiaries.

[8] Explanation required. Indemnity is a separate cause of action and should not limit the Province's primary entitlements under this Agreement, opposite the Trust and the Indenture Trustee. If an override in favour of OPG is contemplated, that should be clearly set out and understood. This provision confuses concepts. In any event, the Trust is not a party to or a protected person under the indemnity.

with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

### 1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

### 1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

### 1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

### 1.18 References to Acts of the Financing Entity ~~Trustee~~

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity ~~or the Financing Entity Trustee, as trustee of the Financing Entity,~~ is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to ~~(i)~~ the Financing Entity ~~or (ii) the Financing Entity Trustee~~, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity~~-~~). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**[9]

[9] Otherwise validity of Trust obligations becomes questionable and opinion qualifications would become likely. Revert to Blakes language.

### 1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~[that would have been payable from Available Collections had the Protection Event not occurred][10][owing][11] from time to time by the Financing Entity to the Indenture Trustee as and

[10] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected. This language is an alternative to the simple drafting approach contemplated in the term sheet ("without acceleration"), and is more complex. It would also make the new "additional amount" (i.e., extra amounts up to the FAA) part of the Province's obligations, which has not been contemplated by the OFA to date and will need to be considered separately.

[11] This would mean that the entire amount of the Notes would become payable, as a balloon. That is not the deal.

when they become due and payable[, without Acceleration~~1~~][12]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation[, ~~(~~without Acceleration~~),~~][13] in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~[that would have been payable from Available Collections had the Protection Event not occurred] [owing] by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[~~2~~14], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection Account~~ [Protection Account][15] [5 Business Days prior to the fifteen day of each calendar month][16] (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

[1] ~~Consider~~[12] This is a simpler and preferred formulation for the relevant concept. Also, consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[13] If alternative approach is preferred (as described above), this will also need to be modified.

[~~2~~14] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

[15] Addition of Protection Account step will require further consideration. Province needs to see how the Trust Indenture will be modified to address this mechanically (i.e., part of the Collateral; mechanics of how funds move to Collection Account; equitable claims; etc. Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights).

[16] Delete. Province will pay on the date amounts would have otherwise been paid; not in advance.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.]~~[3]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into ~~Collection~~Protection Account[17] in Satisfaction**

(a) [On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement.

[3] ~~Under consideration.~~

[17] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.]

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[4] Upon a payment having been made by or on behalf of the Province into the ~~Collection~~Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[~~5~~18]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

[4] ~~This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently.~~

[~~5~~18] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

### 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

### 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03~~]~~.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if ~~(a)~~ the Adherence Conditions applicable thereto have been satisfied~~; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation~~.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments~~6~~[19] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of

~~6~~[19] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;[20]

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG [and, for clarity, such certificate is to be provided in OPG's capacity as FSM][21]) and addressed to the ~~Province and the~~ Indenture Trustee and the Province[22], one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum[23]; and

ii. confirmation that [the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province][ the FSM has delivered

[20] Province needs this to be part of the adherence process opposite the indenture trustee. Since the PAM will be objectively determined and within the knowledge of the indenture trustee (as contemplated in para (c)), this should not raise practical constraints. This is analogous to current procedures undertaken in connection with the incurrence of provincial obligations, where the conditions to issuance involve specific affirmation that the issuance is within the prescribed borrowing limit.

[21] OPG's capacity in certifying is under consideration, having regard to the inherent limitations associated with actions undertaken as FSM.

[22] Certificate is intended as Province's closing due diligence and so needs to be addressed and delivered to Province. Otherwise Province will need to become directly involved in the closing process. Province is prepared to rely on OPG for this purpose to accommodate OPG's logistical concerns, but that does not mean that Province can be removed from the closing process altogether, without the benefit of these required affirmations.

[23] Province wants OPG to specifically confirm this at the time of closing, to support the Province's reliance on OPG for this critical purpose.

to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement][24]; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee[25], the FSM and the Financing Entity in accordance with the terms of this Agreement.

(f)

(g) , confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(h) **[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

### 4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be ~~defect~~defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## ~~RIGHTS OF THE~~ PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. ~~(a)~~ to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. ~~(b)~~ as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, **[NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled**

[24] The intention was not to incorporate specific terms of the Process Agreement into the Protection Agreement, to avoid the need for investors, relying on the Protection Agreement, to be concerned about its contents. If there is a preference to hard-code the Process Agreement in the Protection Agreement, the Province will not object but further drafting considerations will arise.

[25] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province can cut-off future Limited Guarantees opposite the indenture trustee.

**to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]** [26]

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

[26] The idea is that if the Province steps in and becomes the obligor, it will get all of the underlying interests in the Trust's property (i.e., "interests … in respect of the Approved Obligation" = collateral). If this seems confusing, a parallel provision can be added to Art VI to address the step-in scenario specifically. Discussion of any concerns will be useful.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Voting Rights under "Outstanding Notes"

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[7][27]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Explanation required regarding why not restricting these voting rights to the Province may affect the marketability of the debt under this program.]**

## 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8][28] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

[7][27] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

[8][28] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

## 5.05 Representations and Warranties

The Province hereby represents and warrants[29] that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

# ARTICLE VI
# NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

## 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

## 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[930]

## 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee, but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. **[NTD: Need to move Article VI**

[29] Province input required.

[930] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

**of the Change of Law Process Agreement into this Article VI and amend accordingly.[31] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[32]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize

[31] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[32] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

**7.04 Release of all Collateral[33]**

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings[34]**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

**[Note: Any right to such matters will be the general rights of Specified Creditors[35] as set out in the Trust Indenture.]**

[33] Before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs to know that the Collateral available to it as a subrogee/assignee will be protected. Province may have different interests than Specified Creditors, who may make concessions based on the protections under this Agreement being available to them in lieu of the Collateral.

[34] Again, before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs information that could affect its future rights as a subrogee/assignee. This is not a voting right; rather just a right to know what is going on. Why a problem?

[35] As explained above, Province needs rights prior to a Protection Event.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM ~~or~~to the Province ~~to~~and the Indenture Trustee promptly following the occurrence of a Program Breach;

(b) may be provided by the Province to the Indenture Trustee upon the Province becoming aware of the occurrence of a Program Breach; and

(c) ~~(b)~~ may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the ~~Financing Entity~~Limited Guarantee shall not ~~incur~~apply in respect of any ~~new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province~~Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On the earlier to occur of (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[36]

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

[36] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o Ontario Power Generation Inc.~~

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.07 ~~Force Majeure~~Intentionally Deleted**

~~In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.~~

## 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

## 9.09 ~~9.08~~ Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN**~~**FAIR HYDRO TRUST, BY ITS** ~~**CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**~~**MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

**CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[10]37 in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

~~["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]~~

~~["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]~~[11]

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of [OPG] under the Process Agreement; or (b) any representation or warranty made by [OPG], any certification made by [OPG] under the Process Agreement, or any certification made by [OPG] in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken

[10]37 Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[11] ~~Note: To be confirmed if required.~~

by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.][has the meaning ascribed thereto in the Process Agreement.][38]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

[["**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.][39]

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

[["**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.]

[["**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.]

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

[38] Consider longer version to avoid hard-coding Process Agreement into this Agreement.
[39] Confirm, vs use of a Protection Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "~~Investment Interest~~investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

~~[~~"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.~~]~~

~~[~~"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.~~]~~[12]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, ~~and acknowledged and~~

[12] ~~Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

~~accepted by~~as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation~~,~~ or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (~~a~~i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; ~~and~~ (~~b~~ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and ~~OPG~~[the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement. **[NTD: To be discussed.]**

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts ~~on~~in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof,

is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Friday, November 10, 2017 12:50:30 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/9 |
| Description | TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/11 |
| Description | TOR_2528-#23239360-v11-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 237 |
| Deletions | 113 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 354 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**FAIR HYDRO TRUST[1], BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

[1] "Trustee" is the "legal entity". Trustee itself should sign all primary documents to make "manager" delegation meaningful and to avoid invalidating the Trust as a "trust".

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Ontario Power Generation Inc., as the Manager and in its capacity as Manager of Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The FSM, as agent of the Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

[2] See OFHPA, definition of "financing entity". FSM to establish or cause to be established. Needed for authority under OFHPA 5(3), among other things.

The FSM[3] and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the FSM[4] and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, [except in each case as referenced in the definition of Protection Event][5];

[3] Need to confirm parties to the Process Agreement. OPG, acting as FSM, implies potential limitation on OPG's liability.

[4] Deletion of the Trust as a party is unacceptable since would impact Province's rights against Trust's assets (e.g., as a subrogee).

[5] Covered in preamble, so delete.

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

## 1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.[6]

## 1.03 ~~1.02~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province

[6] Enforcement of the Limited Guarantee under this Agreement must be limited to enforcement by the Indenture Trustee on behalf of the Beneficiaries. The Trust Indenture should deal with the manner and limitations on the Indenture Trustee's actions with respect to enforcement.

with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

## 1.04 ~~1.03~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.[7]

## 1.05 ~~1.04~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation. [To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.][8]

## 1.06 ~~1.05~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

## 1.07 ~~1.06~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

## 1.08 ~~1.07~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable

[7] There is no intention to provide a separate cause of action for individual Beneficiaries.

[8] Explanation required. Indemnity is a separate cause of action and should not limit the Province's primary entitlements under this Agreement, opposite the Trust and the Indenture Trustee. If an override in favour of OPG is contemplated, that should be clearly set out and understood. This provision confuses concepts. In any event, the Trust is not a party to or a protected person under the indemnity.

with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

### 1.09 ~~1.08~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.10 ~~1.09~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.11 ~~1.10~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.12 ~~1.11~~ Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.13 ~~1.12~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

### 1.14 ~~1.13~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

## 1.15 ~~1.14~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## 1.16 ~~1.15~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

## 1.17 ~~1.16~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

## 1.18 ~~1.17~~ References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to the Financing Entity, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the FSM as agent for the Financing Entity Trustee (in its capacity as trustee of the Financing Entity). **[NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]**[9]

[9] Otherwise validity of Trust obligations becomes questionable and opinion qualifications would become likely. Revert to Blakes language.

**1.19 ~~1.18~~ Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

**2.01 Limited Guarantee**

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~[that would have been payable from Available Collections had the Protection Event not occurred][10][owing][11] from time to time by the Financing Entity to the Indenture Trustee as and

[10] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected. This language is an alternative to the simple drafting approach contemplated in the term sheet ("without acceleration"), and is more complex. It would also make the new "additional amount" (i.e., extra amounts up to the FAA) part of the Province's obligations, which has not been contemplated by the OFA to date and will need to be considered separately.

[11] This would mean that the entire amount of the Notes would become payable, as a balloon. That is not the deal.

when they become due and payable[1][, without Acceleration][12]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation[, without Acceleration,][13] in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~[that would have been payable from Available Collections had the Protection Event not occurred] [owing] by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2][14], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the [Protection Account ][15] [5 Business Days prior to the fifteen day of each calendar month][16] (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

[1] ~~Consider~~[12] This is a simpler and preferred formulation for the relevant concept. Also, consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.

[13] If alternative approach is preferred (as described above), this will also need to be modified.

[2][14] Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.

[15] Addition of Protection Account step will require further consideration. Province needs to see how the Trust Indenture will be modified to address this mechanically (i.e., part of the Collateral; mechanics of how funds move to Collection Account; equitable claims; etc. Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights).

[16] Delete. Province will pay on the date amounts would have otherwise been paid; not in advance.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 ~~Gross-up~~Intentionally Deleted.**

~~All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.~~

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Protection Account[17] in Satisfaction**

(a) [On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture as if it were an Issuer Account.]

[17] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[~~3~~18]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

## 2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. ~~**[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**~~

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

[~~3~~18] Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture and each other contract under which the Obligation Secured arises, to the effect that the Beneficiaries will be deemed to be bound by the agreement of the Indenture Trustee under this Agreement. Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?

## 2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

## 2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

## 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations ~~and termination of the Trust Indenture~~, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

## 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~.~~,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement,

suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) ~~**[NTD: already covered in process certificate in section 3.01 of the Process Agreement]**~~at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[19] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the

[19] Use of the concept of "repayments" under the OFHPA for this purpose is under consideration.

future in respect of Repayments under Approved Obligations, do not exceed the Protection Agreement Maximum;[20]

(c) ~~[NTD: already covered under Process Agreement.]~~the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, one Business Day prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG [and, for clarity, such certificate is to be provided in OPG's capacity as FSM][21]) and addressed to the Indenture Trustee and the Province[22], one Business Day prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), ~~confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section [3.01] of the Process Agreement; and~~setting out the following with respect to the Primary Obligation:

i. confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation (if any), together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum[23]; and

ii. confirmation that [the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province][ the FSM has delivered

[20] Province needs this to be part of the adherence process opposite the indenture trustee. Since the PAM will be objectively determined and within the knowledge of the indenture trustee (as contemplated in para (c)), this should not raise practical constraints. This is analogous to current procedures undertaken in connection with the incurrence of provincial obligations, where the conditions to issuance involve specific affirmation that the issuance is within the prescribed borrowing limit.

[21] OPG's capacity in certifying is under consideration, having regard to the inherent limitations associated with actions undertaken as FSM.

[22] Certificate is intended as Province's closing due diligence and so needs to be addressed and delivered to Province. Otherwise Province will need to become directly involved in the closing process. Province is prepared to rely on OPG for this purpose to accommodate OPG's logistical concerns, but that does not mean that Province can be removed from the closing process altogether, without the benefit of these required affirmations.

[23] Province wants OPG to specifically confirm this at the time of closing, to support the Province's reliance on OPG for this critical purpose.

to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement][24]; and

(e) the Province has not provided a Suspension Notice to the Indenture Trustee[25], the FSM and the Financing Entity in accordance with the terms of this Agreement.

(f)

(g) , confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(h) ~~(e)~~ **[NTD: This is more properly dealt with in Section 8.02 of this Agreement.]**.

### 4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## PROVINCE MATTERS

### 5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation:

i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

ii. ~~[~~as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,~~]~~ **[NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved**

[24] The intention was not to incorporate specific terms of the Process Agreement into the Protection Agreement, to avoid the need for investors, relying on the Protection Agreement, to be concerned about its contents. If there is a preference to hard-code the Process Agreement in the Protection Agreement, the Province will not object but further drafting considerations will arise.

[25] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province can cut-off future Limited Guarantees opposite the indenture trustee.

**Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]** [26]

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~Subject to Section 5.01(b), the~~The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. ~~Subject to Section 5.01(b), the~~The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) ~~the~~The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province~~ will be a Specified Creditor hereunder and its entitlements~~, in its capacity as a Specified Creditor~~ are~~, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including~~, without limitation,~~ **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**~~, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the~~

[26] The idea is that if the Province steps in and becomes the obligor, it will get all of the underlying interests in the Trust's property (i.e., "interests … in respect of the Approved Obligation" = collateral). If this seems confusing, a parallel provision can be added to Art VI to address the step-in scenario specifically. Discussion of any concerns will be useful.

~~priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv~~ and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

## 5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

## 5.03 Voting Rights under "Outstanding Notes"

**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[427]:**

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. ~~Giving~~Explanation required regarding why not restricting these voting rights to the Province may affect the marketability of the debt under this program.]**

## 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the

[427] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).

Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[528] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

### 5.05 Representations and Warranties

The Province hereby represents and warrants[29] that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including~~, without limitation,~~ under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

## ARTICLE VI
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

### 6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

### 6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[630]

[528] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

[29] Province input required.

[630] Further details regarding obtaining of third party consents and rating agency approvals to be considered.

### 6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead ~~be~~become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[31] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[32]]**

### 6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

[31] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[32] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

### 7.04 Release of all Collateral[33]

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

### 7.05 Right to Notice and Attend Meetings[34]

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

[33] Before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs to know that the Collateral available to it as a subrogee/assignee will be protected. Province may have different interests than Specified Creditors, who may make concessions based on the protections under this Agreement being available to them in lieu of the Collateral.

[34] Again, before the Province is called to perform its obligations under this Agreement (only then becoming a Specified Creditor based on the current drafting), the Province needs information that could affect its future rights as a subrogee/assignee. This is not a voting right; rather just a right to know what is going on. Why a problem?

**[Note: Any right to such matters will be the general rights of Specified Creditors[35] as set out in the Trust Indenture.]**

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

### 8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM to the Province and the Indenture Trustee promptly following the occurrence of a Program Breach;

(b) may be provided by the Province to the Indenture Trustee ~~promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(c) ~~(b)~~ may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event that has not been waived in writing by the Province.

### 8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), ~~this Change of Law Protection Agreement~~the Limited Guarantee shall not apply in respect of any ~~new Primary~~ Obligation ~~following~~Secured incurred on or after the ~~date of such Suspension Notice. **[NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]**~~time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

### 8.03 Termination Notice

On the earlier to occur of (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). ~~Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI **[NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]**~~[36]

[35] As explained above, Province needs rights prior to a Protection Event.

[36] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

### 8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with ~~this Agreement~~Article VI.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the ~~[~~later~~]~~ of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and ~~the Trust Indenture has been terminated;~~

(b) ~~**[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of~~the date that a Termination Notice ~~from the Province~~delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity~~, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and~~.

~~(c) **[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?]** following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.~~

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other

communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

### 9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

### 9.07 Intentionally Deleted

### 9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement~~ and all such Persons who are Beneficiaries derive their rights~~. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and ~~such rights are~~shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. **[NTD: Consider merging this section 9.08 with section 1.03.]**

### 9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[737] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of [OPG] under the Process Agreement; or (b) any representation or warranty made by [OPG], any certification made by [OPG] under the Process Agreement, or any certification made by [OPG] in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.][has the meaning ascribed thereto in the Process Agreement.][38]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

[737] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[38] Consider longer version to avoid hard-coding Process Agreement into this Agreement.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

["**Collection Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.][39]

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

["**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture~~.~~ as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.]

["**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture~~.~~ as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.]

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

[39] Confirm, vs use of a Protection Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured ~~that is a Funding Obligation or otherwise constitutes a Finance Amount~~ (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

[["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means ~~[~~an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture~~]~~ or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.~~]~~ **[NTD: To be discussed.]**

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, **[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, ~~or~~and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

# EXHIBIT D
# TERMINATION NOTICE

# EXHIBIT E

# FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Friday, November 10, 2017 12:40:44 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239360/10 |
| Description | TOR_2528-#23239360-v10-CLPA_-_Protection_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239360/11 |
| Description | TOR_2528-#23239360-v11-CLPA_-_Protection_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 197 |
| Deletions | 98 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 297 |

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER][1]**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

[1] Province to consider whether liability of OPG should be primary, or subject to the inherent limitations (e.g., duty/standard of care) implied by its role as FSM. Primary responsibility for the 'behind the scenes obligations' contemplated in this Process Agreement would be more meaningful to the extent that potential corporate liability promotes compliance .

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1][2]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, [the FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

[1][2] Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor, [except in each case as referenced in the definition of Protection Event];

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the [FSM, as agent of the][3] Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

[3] Validity considerations if FSM effects primary agreements that in turn define the scope of its authority.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF THE FSM

### 2.01 Deliveries to the Province[4]

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, the FSM shall deliver to the Province a copy of the initial Financing Plan. Thereafter, the FSM shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, the FSM shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, the FSM shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, the FSM shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

### 2.02 Covenants

(a) The FSM shall [use commercially reasonable efforts to][5] cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

[4] Province to consider OPG's proposed deletion of fallback (non-PILs) access to tax information for the Trust.
[5] Province to consider lower standard for compliance proposed by OPG, particularly (ii) to (v).

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; ~~or~~

(B) consent to the resignation of the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) The [FSM shall use commercially reasonable efforts to][6]:

(i) comply, and to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; ~~and~~

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) ~~(ii) to,~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any

[6] Province to consider lower standard for compliance proposed by OPG.

other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).

(c) [Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail. For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.][7]

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

The FSM shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of the FSM (or their respective designees, provided that such designees are also executive officers of the FSM) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

[7] Province to consider interaction of this Agreement with the OPG indemnity. To the extent that OPG is indemnified, the impact of OPG non-compliance is significantly reduced to the extent that liability considerations are relevant to OPG.

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; [for clarity, Repayments shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement].[8]

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to the FSM; and

[8] This requires further consideration. This could cut both ways to the extent non-CAD deals are done and the FX is hedged.

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to the FSM.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation [that would be adverse to the Issuer][9], including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; ~~and~~

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) ~~(b)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

[9] Province to consider if OPG should be empowered to make this qualitative judgment on behalf of the Province.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum[10]

(a) [Not less than [■] Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum which shall be based on the Initial Forecast.

(b) Not more than [■] Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the initial Protection Agreement Maximum will be revised accordingly.]

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a

[10] Province to consider OPG's proposal for Program Agreement Maximum. In effect, the discretion of the Province is removed and the limiter is tied directly to OPG's forecast (to be consistent with the financing plan required by the Act). This means that the Province has no independent escape hatch to limit its potential fiscal exposure under the Protection Agreement. As discussed, the actual exposure will depend on the determinations to use the IESO sale mechanics to fund shortfalls – in other words, if IESO were to not sell investment interests, then the corresponding funding obligations subject to the Protection Agreement would not arise. Note that the financing plan is almost entirely within OPG's discretion and is based on long-term estimates that assume maximum use of the IESO sale mechanics. Has the Province confirmed that committing to this arrangement for the term (30 years) of the OFHPA, without a limiter that is within the Province's control, will not result in a huge contingent liability being booked in the Province's accounts (i.e., maximum fundings for 30 years)? Has the Province determined whether there are other internal governance reasons to require an escape hatch for the purposes of its fiscal management purposes? Note that Protection Events are not all within the Government's control (e.g., *ultra vires* and invalidity issues).

"**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum based on such Forecast.

(d) Not more than [■] Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will discuss and address any inaccuracies in the Financing Plan to the reasonable satisfaction of both parties, and the revised Protection Agreement Maximum will be revised accordingly.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of the FSM

The FSM represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall [use commercially reasonable efforts to] cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

[OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.][11]

[11] Province to consider carve back of OPG reps and liability issues with role as FSM only.

(c) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of [the Financing Entity enforceable against the Financing Entity][12] in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(d) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(e) [There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.][13]

(g) ~~(e)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) [Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or

[12] Focus was on OPG. They shifted it to the Trust.
[13] Province to consider carve back of OPG reps and liability issues with role as FSM only.

instruments to which OPG is a party or by which it or any of its property and assets are bound.][14]

(i) [No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.] [15]

**5.02 Representations and Warranties of the Province[16]**

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement does not and will not result in a violation of any applicable law;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations hereunder; and

(d) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

[14] Deleted by OPG. Province to consider.
[15] Deleted by OPG. Province to consider.
[16] Province to consider OPG's request for these representations. Does the Province make these sorts of representations in a commercial agreement? To the extent that the Province makes a statement (such as 5.02(d)) that is not caveated by the usual considerations applicable to a Crown obligation, the parallel rep requested in the Protection Agreement could be held out as a misstatement and itself provoke a "Protection Event" – suggesting that these sorts of "nice to have" reps from the Province will be more work (and potentially dangerous) than they are worth.

## ARTICLE VI
## ELECTION[17] TO ASSUME APPROVED OBLIGATIONS[2][18]

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to the FSM a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to the FSM (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to the FSM, the FSM shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

[17] Province to consider OPG's proposal to move Art VI to the Protection Agreement. The approach taken originally was motivated by the desire to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee), but should otherwise be fine in principle.

[2][18] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured is attached as Exhibit E to the Change of Law Protection Agreement.[3][19]

**6.03 Settlement of Terms**

Within 20 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

**6.04 Cooperation to Implement the Assignment and Assumption**

The FSM shall cooperate with the Province and will [use commercially reasonable efforts to][20] cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4][21]

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, the FSM will use commercially reasonable efforts to cause the Financing Entity to, [use commercially reasonably efforts to] ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~; provided that, this Section 6.05 shall not apply to any Obligations Secured~~, other than to the extent of payment obligations arise under

[3][19] Note to Province: A form of global Assumption Agreement for all Obligations Secured is required. It is impractical to have an assumption agreement for each type of Obligation Secured. Province: We can be guided by OPG on this, but it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations. Ultimately, this is a mechanics point.

[20] Province to consider scope of commitment.

[4][21] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[522]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of the FSM under this Agreement [which continues for sixty (60) days after written notice by the Province to the FSM of such default or breach][23];

(b) any representation or warranty made by the FSM in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.03 of the Change of Law Protection Agreement, proves to be incorrect on the date made [and, if curable, is not cured within sixty (60) days after written notice by the Province to the FSM of such misrepresentation][24]; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. **[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**[25]

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to the FSM, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[522] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture. **[NTD: The form of Assumption Agreement shall be an exhibit to the Change of Law Protection Agreement (consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We will add the following to the MTI to otherwise address your comment: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows the Indenture Trustee to enter into the global Assumption Agreement without the consent of Specified Creditors.]**

[23] Province to consider proposed 60 day cure period. This is an extraordinary suggestion and if accepted would greatly weaken the Province's ability to address a problem in the unlikely event one comes up with OPG.

[24] Extraordinary suggestion by OPG – weakens Province.

**[25]** This should be considered. If true, it is unclear why that should make a difference – in terms of enabling the Province to cut-off its forward obligations in the event of a fundamental problem or circumstance (change of control) that leads to a replacement of OPG as FSM.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Intentionally Deleted**[626]

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

[626] To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.][Province: That circle should still be protected through carve-outs from ordinary non-disclosure terms and conditions. Province to consider if confidentiality is a concern. It was included as a consideration in the term sheet.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC., [SOLELY][27] AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY**

By: _____

Name:
Title:

By: _____

Name:
Title:

[27] Unusual. OPG is trying to incorporate inherent limitations applicable to an agency relationship.

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**FAIR HYDRO TRUST, BY ITS MANAGER, ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture

Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

Document comparison by Workshare Compare on Friday, November 10, 2017 12:39:56 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/8 |
| Description | TOR_2528-#23239361-v8-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/9 |
| Description | TOR_2528-#23239361-v9-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 137 |
| Deletions | 33 |
| Moved from | 1 |
| Moved to | 1 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 172 |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Ken Kandeepan; Mike Manning |
| **Cc:** | Tobias P. Whitfield (MOF) |
| **Subject:** | RE: Provincial Protection and Process Agreements \| OFA, OPCD, MOF, Energy, Legal Counsel |
| **Date:** | Tuesday, November 14, 2017 8:10:53 AM |

Will do right away. Thanks Malle.

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Tuesday, November 14, 2017 7:40 AM
**To:** Anna Strathy ; Ken Kandeepan ; Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Fw: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi Anna

I don't know if you have been asked to schedule a meeting yet. Would you pls schedule one for 10 to 1. Or whatever time works given timelines. Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

**From:** Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Sent:** Monday, November 13, 2017 11:35
**To:** Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.

Malle

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November-10-17 2:00 PM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456
-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to Moderate

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Veinot, Cindy (TBS) |
| **To:** | Anna Strathy; James Strang (MOF) |
| **Cc:** | Hosick, Sarah (TBS); Ronald Kwan; Afshin Malekzadeh (MOHLTC); Chris Skubel (MGS); Indira Komal (MCSCS); Lenna Wichenko (MCSCS); Paul Kaufman (MOHLTC); Nick Smook (MOF); Anthony Reiss (MGS); Pratima Gounden (ENERGY); Ken Kandeepan; Gadi Mayman; Mike Manning; Mark Donaldson (MOF); Hosick, Sarah (TBS) |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 12:00:27 PM |
| **Attachments:** | 4 RAN MOF ENERGY - Change of Law Protecition Agreement v4 (MOF ENE com_OPCD.doc |

Attached are my suggested edits -- Cindy

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 20, 2017 11:00 AM
**To:** Strang, James (TBS)
**Cc:** Veinot, Cindy (TBS); Hosick, Sarah (TBS); Kwan, Ronald (OFA); Malekzadeh, Afshin (TBS); Skubel, Chris (TBS); Komal, Indira (TBS); Wichenko, Lenna (TBS); Kaufman, Paul (TBS); Smook, Nick (TBS); Reiss, Anthony (MOF); Gounden, Pratima (ENERGY); Kandeepan, Ken (OFA); Mayman, Gadi (OFA); Manning, Mike (OFA)
**Subject:** RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi James,

Please find attached, consolidated comments and edits from the OFA, Energy, and MOF Legal, as well as responses to your questions, below.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, September 19, 2017 9:36 AM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>; Paul Kaufman (MOHLTC) <Paul.Kaufman@ontario.ca>; Nick Smook (MOF) <Nick.Smook@ontario.ca>
**Subject:** Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi,

Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify. The working title of the agreement is the Provincial Protection Agreement; however it is still subject

to change.

- Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope? The third trigger is in and it's been narrowed to ensure only a change that adversely impacts the ability of the Financing Entity to collect payments would trigger the protection agreement.

- What are derivative agreements? Payments under derivative agreements? Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt.
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market? The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.
- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA? The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

Thanks in advance,

James Strang
416-327-2071

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| | **Ministry:** | Energy & Finance |
| | **Meeting Date:** | September 26, 2017 |
| | **Agenda Class:** | Discussion (In-Camera) |
| | **Last reviewed by:** ENERGY TB/MBC May 9, 2017 | **Tracking to:** Fast Track Cabinet (September 27, 2017) |

| **SUBMISSION TITLE:** | Change of Law Protection Agreement<br>(Supports Ontario's Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the *OOntario Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

Formatted: Font: Italic

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc (OPG).<br><br>– Under certain circumstances, the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG) | *Approve* |
| Authorize that the Minister of Finance and Minister of Energy ~~to~~ provide a protection agreement, to be authorized by Order in Council under the ~~Ontario~~ *Fair Hydro Plan Act, 2017*(FHPA).<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council (OIC), in accordance with section 5 of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* (FHPA) that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

Commented [ESP1]: This item is not up for approval per the TB Sub.

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Recommended program base | 0.0 | 0.0 | 0.0 |
| Offset Recommended | 0.0 | 0.0 | 0.0 |
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the ~~Ontario~~ *Fair Hydro Plan Act, 2017*, (~~O~~FHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will ~~have~~ incur a cash shortfall, as the amounts collected from the consumers of electricity (e.g. the local distribution companies) will be reduced, but the amounts paid to the generators of electricity will remain at the market and/or contractual rates.~~a funding gap resulting from the reduction in amounts collected~~. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

The ~~O~~FHPA provides for ~~the~~ IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the ~~O~~FHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the ~~O~~FHPA) will have the right, but not the obligation to purchase the regulatory asset, effectively financing the shortfall ~~in~~ generated by the reduction in current ~~rates not received from the~~for eligible ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity ~~must~~ will borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets.

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a ~~change of law~~ protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this~~, in a May 2017 TB/MBC item reviewing proposed FHPAOntario Fair Hydro Plan legislation,~~ through Provinci~~al~~e assurance and guarantee provisions~~,~~ was recommended in a May 2017 TB/MBC item reviewing proposed FHPA.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the ~~O~~FHPA/related regulations or new legislation that materially and adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or ~~*unenforceable*~~*ultra vires*; and
- A change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that materially and , adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations~~Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on~~

**Commented [VC(2]:** Not sure that this is consistent with OPG advice, and I'm not sure it matters

**Formatted:** Font: Italic

**Formatted:** Font color: Black

**Formatted:** Font color: Black

**Formatted:** Font color: Black

its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.

*Note: this third protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.]*

*….the third bullet isn't change of Law related?…*

**Commented [AS3]:** May or may not be the result of a change of law.

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability contingent liability would increase over the duration of Ontario's Fair Hydro Plan (OFHP) the OFHP and peak at approximately $20B an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

**Commented [HS(4]:** This is inconsistent with the Aug 31 Submission

Thought the estimated debt # was lower?

- In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time, and depending on change, the province could incur an expense equivalent to the amount of the increase in the outstanding debt.
- The Province's interest payments will will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on related to derivatives agreements and for service providers that the Province will be required to make. The fiscal impact of the increased interest payments will depend on the circumstances of the change (e.g. will the amounts continue to be recovered from the ratepayers through the clean energy adjustment as provided for under the FHPA).

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers. This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time, and the Province may incur an expense equal to the amount of the debt.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. The worst case scenario would be the Province assuming the debt at its peak at which point interest on debt (IOD) expense could increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

**Commented [VC(5]:** I understand this would require a change in legislation – may want to confirm with OFA.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (Interest On Debt (IOD) expense) will depend on whether or not some portions of the

OFHPA continue in some form, or not.

- For example if the ~~If the~~ payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments, albeit not necessarily in the same fiscal period; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense as well as any continued impact of reduced electricity rates would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.
- Debt incurred ~~to~~ for benefit the ratepayer could becomes the responsibility of the taxpayer.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 18, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE (UNDER DEVELOPMENT)

Approve the Ministries plan for implementing provisions of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. In particular, that under certain circumstances the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG).

In this regard,

i) Authorize that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the ~~Ontario~~ *Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet including in the TB/MBC Submission, (… minuting an attachment?…or include key parameters in minute only, given request for the subject to revisions provision…) and subject to such revisions that the two ministers acting together may determine;

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the FHPA~~Ontario Fair Hydro Act~~, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

**Commented [AS6]:** Recommend referring to the attachment rather than key parameters (limit potential revisions to the term sheet)

**Commented [VC(7]:** This agreement is being approved prior to the commercial agreements being finalized, so from an accounting perspective, we do not have updated opinions/memos from KPMG re: IESO and EY re: OPG. I have asked the two CFOs to provide me with a summary of the work they have completed with their respective auditors by EOD tomorrow and we can insert that in the memo.

We may also want to include a report back to the Board once the accounting analysis is complete. That may also be an issue for the final legal and financing risks.

## APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM ~~ONTARIO~~ *FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

## APPENDIX D: NON-BINDING TERM SHEET

Commented [AS8]: Update to Sep 18 version

### APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

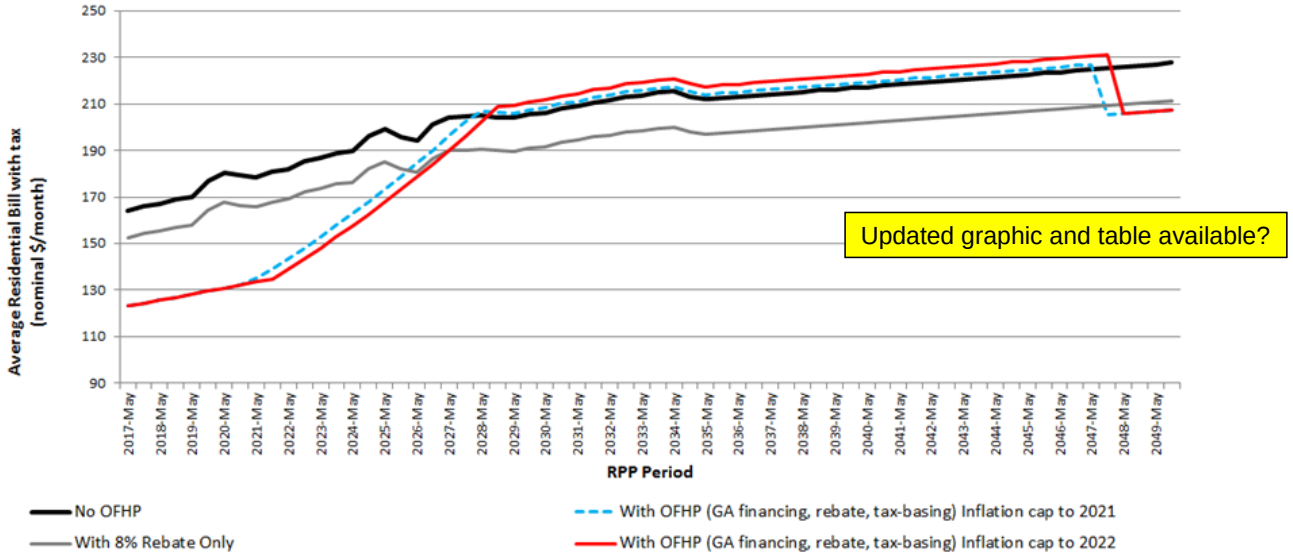
| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

## APPENDIX E: PROFILE GLOBAL ADJUSTMENT SMOOTHING FOR RPP – ELIGIBLE ONLY – MAY 2017 TB/MBC SUBMISSION

Commented [HS(9]: Recommend that we don't include this reference.

The following graphic and table shows the multi-year profile of the planned approach to GA Smoothing that was included with the May 2017 TB/MBC Submission. The table below supports the Ministries assessment that the potential contingent liability under the protection agreement over the duration of the OFHP would peak at an estimated $24M to $26B (subject to final cost forecasts TBC), including principal and interest.

Commented [ESP10]: These numbers and the table below are pending finalization of costs forecasts – this work is still ongoing with OPG.




Updated graphic and table available?

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 | 2037 | 2038 | 2039 | 2040 | 2041 | 2042 | 2043 | 2044 | 2045 | 2046 | 2047 | 2048 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Average monthly bill with OFHP ($/month) | 124 | 126 | 129 | 131 | 137 | 146 | 155 | 165 | 176 | 187 | 199 | 207 | 207 | 209 | 212 | 214 | 216 | 216 | 214 | 215 | 216 | 217 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 216 | 206 |
| Year-over-year change (%) | n/a | 2.01 | 2.01 | 2.01 | 4.25 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 3.61 | 0.08 | 1.20 | 1.29 | 1.14 | 0.93 | -0.04 | -0.88 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | -4.37 | -4.61 |
| Impact of GA financing and tax-basing ($/month) | -29.9 | -30.0 | -35.0 | -34.4 | -28.8 | -24.0 | -17.8 | -14.2 | -3.3 | 3.4 | 12.2 | 16.4 | 16.5 | 16.7 | 16.9 | 17.1 | 17.2 | 17.1 | 17.0 | 17.1 | 17.2 | 17.3 | 17.4 | 17.5 | 17.6 | 17.6 | 17.7 | 17.8 | 17.9 | 18.0 | -3.9 | -4.0 |
| Total accumulated debt ($B) | 2.5 | 5.2 | 8.2 | 11.6 | 14.7 | 17.5 | 19.9 | 22.0 | 23.5 | 24.1 | 24.2 | 23.7 | 23.1 | 22.5 | 21.8 | 21.0 | 20.1 | 19.2 | 18.3 | 17.2 | 16.1 | 14.9 | 13.7 | 12.3 | 10.9 | 9.3 | 7.7 | 5.9 | 4.1 | 2.1 | 0.0 | 0.0 |
| Total change in accumulated debt ($B) | 2.5 | 2.6 | 3.0 | 3.5 | 3.1 | 2.8 | 2.4 | 2.0 | 1.6 | 0.6 | 0.1 | -0.5 | -0.6 | -0.6 | -0.7 | -0.8 | -0.8 | -0.9 | -1.0 | -1.0 | -1.1 | -1.2 | -1.3 | -1.4 | -1.4 | -1.5 | -1.6 | -1.7 | -1.9 | -2.0 | -2.1 | 0.0 |

**Notes:** Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

## APPENDIX F: OVERVIEW OF RISKS

Prepared by TBS staff, the following chart, as part of the May 2017 OFHP implementation update focused on the proposed legislation. It provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

The current submission, ~~Change of Law~~ Provincial Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" (page 16) as part of risk mitigating strategy.

**Commented [VC(11]:** Page 17 now –

I think you need to make it clear that this table has not been updated since May or just include the relevant page.

*Global Adjustment Partial Refinancing:*

**Objective:** Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements.<br>• Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG.<br>• Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |
| A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Medium<br>**Risk Impact:** High<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and close monitoring of costs and changes in variables built into model.<br>• Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Moderate<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases.<br>• Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing. | Risk can be avoided by:<br>• Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure.<br><br>Risk can be mitigated by:<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.<br>• Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br><br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited.<br>• An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG. |
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and ongoing monitoring of costs and changes in variables built into model.<br>• Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

*Electricity social programs (Enhancing Electricity Support & Conservation Programs):*

**Objective:** Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Timescale:** 12 to 24 months<br><br>**Rationale:**<br>• The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate.<br>• Fiscal projection is highly dependent on factors which can fluctuate from year to year, including:<br>o electricity usage;<br>o distributions costs; and<br>o consumer consumption patterns that may change due to extreme weather or other factors.<br>• Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs.<br>o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models. |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 11:13:11 AM |

Hi Ron,

Thank you for this, I'll pass this along to the TB Analyst for his review; although unfortunately, I don't think your edits will make it into his note for Chair's briefing this afternoon (I had sent James an advanced mark-up early this morning to make it in time for the TB mail-out).

Anna

---

**From:** Ronald Kwan
**Sent:** Wednesday, September 20, 2017 11:09 AM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Subject:** Re: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi Anna,

Sorry for the timing, but here are some suggestions to an earlier version Ken sent on to me this morning.

Ron

---

**From:** Anna Strathy
**Sent:** September 20, 2017 11:00 AM
**To:** James Strang (MOF)
**Cc:** Veinot, Cindy (TBS); Hosick, Sarah (TBS); Ronald Kwan; Afshin Malekzadeh (MOHLTC); Chris Skubel (MGS); Indira Komal (MCSCS); Lenna Wichenko (MCSCS); Paul Kaufman (MOHLTC); Nick Smook (MOF); Anthony Reiss (MGS); Pratima Gounden (ENERGY); Ken Kandeepan; Gadi Mayman; Mike Manning
**Subject:** RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi James,

Please find attached, consolidated comments and edits from the OFA, Energy, and MOF Legal, as well as responses to your questions, below.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, September 19, 2017 9:36 AM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>; Paul Kaufman (MOHLTC) <Paul.Kaufman@ontario.ca>; Nick Smook (MOF) <Nick.Smook@ontario.ca>
**Subject:** Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi,
Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.
Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify. The working title of the agreement is the Provincial Protection Agreement; however it is still subject to change.
  - Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope? The third trigger is in and it's been narrowed to ensure only a change that adversely impacts the ability of the Financing Entity to collect payments would trigger the protection agreement.
- What are derivative agreements? Payments under derivative agreements? Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt.
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market? The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.
- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA? The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

Thanks in advance,
James Strang
416-327-2071

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | James Strang (MOF) |
| **Cc:** | Veinot, Cindy (TBS); Hosick, Sarah (TBS); Ronald Kwan; Afshin Malekzadeh (MOHLTC); Chris Skubel (MGS); Indira Komal (MCSCS); Lenna Wichenko (MCSCS); Paul Kaufman (MOHLTC); Nick Smook (MOF); Anthony Reiss (MGS); Pratima Gounden (ENERGY); Ken Kandeepan; Gadi Mayman; Mike Manning |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 11:00:24 AM |
| **Attachments:** | 4 RAN MOF ENERGY - Change of Law Protecition Agreement v4 (MOF & ENE com....doc |

Hi James,

Please find attached, consolidated comments and edits from the OFA, Energy, and MOF Legal, as well as responses to your questions, below.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]

**Sent:** Tuesday, September 19, 2017 9:36 AM

**To:** Anthony Reiss (MGS) ; Pratima Gounden (ENERGY)

**Cc:** Veinot, Cindy (TBS) ; Hosick, Sarah (TBS) ; Anna Strathy ; Ronald Kwan ; Afshin Malekzadeh (MOHLTC) ; Chris Skubel (MGS) ; Indira Komal (MCSCS) ; Lenna Wichenko (MCSCS) ; Paul Kaufman (MOHLTC) ; Nick Smook (MOF)

**Subject:** Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi,

Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify. The working title of the agreement is the Provincial Protection Agreement; however it is still subject to change.
    - Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope? The third trigger is in and it's been narrowed to ensure only a change that adversely impacts the ability of the Financing Entity to collect payments would trigger the protection agreement.
- What are derivative agreements? Payments under derivative agreements? Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt.
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market? The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would

provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.

- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA? The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

Thanks in advance,
James Strang
416-327-2071

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| | **Ministry:** | Energy & Finance |
| | **Meeting Date:** | September 26, 2017 |
| | **Agenda Class:** | Discussion (In-Camera) |
| | **Last reviewed by:** ENERGY TB/MBC May 9, 2017 | **Tracking to:** Fast Track Cabinet (September 27, 2017) |

| **SUBMISSION TITLE:** | Change of Law Protection Agreement<br>(Supports Ontario's Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the ~~O~~*ntario Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc.

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc (OPG).<br><br>– Under certain circumstances, the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG) | *Approve* |
| Authorize that the Minister of Finance and Minister of Energy ~~to~~ provide a protection agreement, to be authorized by Order in Council under the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017(FHPA).*<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council (OIC), in accordance with section 5 of the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017 (FHPA)* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

**Commented [ESP1]:** This item is not up for approval per the TB Sub.

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Recommended program base | 0.0 | 0.0 | 0.0 |
| Offset Recommended | 0.0 | 0.0 | 0.0 |
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017*, (~~O~~FHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

The OFHPA provides for ~~the~~ IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the ~~O~~FHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the ~~O~~FHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets.

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a ~~change of law~~ protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this~~, in a May 2017 TB/MBC item reviewing proposed FHPAOntario Fair Hydro Plan legislation,~~ through Provinc~~ial~~ assurance and guarantee provisions~~,~~ was recommended in a May 2017 TB/MBC item reviewing proposed FHPA.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the ~~O~~FHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or ~~*unenforceable*~~*ultra vires*; and
- A change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations~~[Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations~~.

~~*Note: this third protection event is not included in the current draft of the term sheet*~~

**Formatted:** Font: Italic

**Formatted:** Font color: Black

**Formatted:** Font color: Black

~~*agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.]*~~

*….the third bullet isn't change of Law related?…*

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of Ontario's Fair Hydro Plan (OFHP) ~~the OFHP~~ and peak at approximately $20B ~~an estimated $24B to $26B~~ of debt (final cost forecasts TBC), including principal and accumulated interest.

- In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers. This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. The worst case scenario would be the Province assuming the debt at its peak at which point interest on debt (IOD) expense could increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would ~~also~~ have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (~~Interest On Debt (~~IOD~~)~~ expense) will depend on whether or not some portions of the OFHPA continue in some form, or not.

- For example if the ~~If the~~ payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.

**Commented [AS2]:** May or may not be the result of a change of law.

**Commented [HS(3]:** This is inconsistent with the Aug 31 Submission

Thought the estimated debt # was lower?

- Debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 18, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE (UNDER DEVELOPMENT)

Approve the Ministries plan for implementing provisions of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. In particular, that under certain circumstances the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG).

In this regard,

i) Authorize that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the ~~Ontario~~ *Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet including in the TB/MBC Submission, (… minuting an attachment?…or include key parameters in minute only, given request for the subject to revisions provision…) and subject to such revisions that the two ministers acting together may determine;

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the FHPA~~Ontario Fair Hydro Act~~, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

**Commented [AS4]:** Recommend referring to the attachment rather than key parameters (limit potential revisions to the term sheet)

## APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM ~~*ONTARIO*~~ *FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

## APPENDIX D: NON-BINDING TERM SHEET

Commented [AS5]: Update to Sep 18 version

### APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

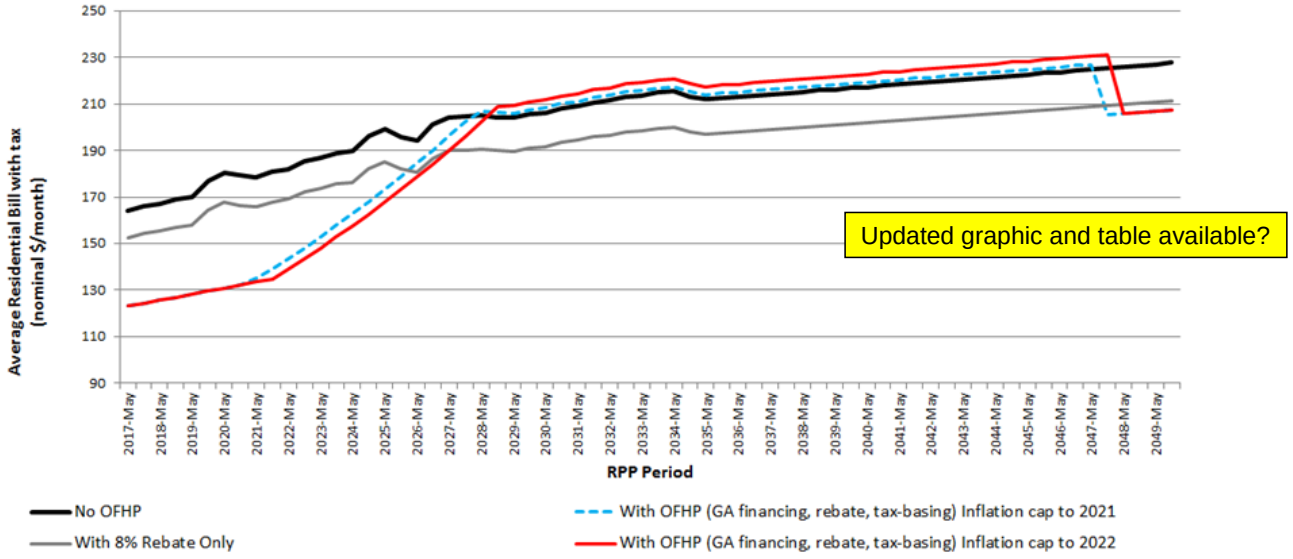
| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

## APPENDIX E: PROFILE GLOBAL ADJUSTMENT SMOOTHING FOR RPP – ELIGIBLE ONLY – MAY 2017 TB/MBC SUBMISSION

Commented [HS(6]: Recommend that we don't include this reference.

The following graphic and table shows the multi-year profile of the planned approach to GA Smoothing that was included with the May 2017 TB/MBC Submission. The table below supports the Ministries assessment that the potential contingent liability under the protection agreement over the duration of the OFHP would peak at an estimated $24M to $26B (subject to final cost forecasts TBC), including principal and interest.

Commented [ESP7]: These numbers and the table below are pending finalization of costs forecasts – this work is still ongoing with OPG.




Updated graphic and table available?

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 | 2037 | 2038 | 2039 | 2040 | 2041 | 2042 | 2043 | 2044 | 2045 | 2046 | 2047 | 2048 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Average monthly bill with OFHP ($/month) | 124 | 126 | 129 | 131 | 137 | 146 | 155 | 165 | 176 | 187 | 199 | 207 | 207 | 209 | 212 | 214 | 216 | 216 | 214 | 215 | 216 | 217 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 216 | 206 |
| Year-over-year change (%) | n/a | 2.01 | 2.01 | 2.01 | 4.25 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 3.61 | 0.08 | 1.20 | 1.29 | 1.14 | 0.93 | -0.04 | -0.88 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | -4.37 | -4.61 |
| Impact of GA financing and tax-basing ($/month) | -29.9 | -30.0 | -35.0 | -34.4 | -28.8 | -24.0 | -17.8 | -14.2 | -3.3 | 3.4 | 12.2 | 16.4 | 16.5 | 16.7 | 16.9 | 17.1 | 17.2 | 17.1 | 17.0 | 17.1 | 17.2 | 17.3 | 17.4 | 17.5 | 17.6 | 17.6 | 17.7 | 17.8 | 17.9 | 18.0 | -3.9 | -4.0 |
| Total accumulated debt ($B) | 2.5 | 5.2 | 8.2 | 11.6 | 14.7 | 17.5 | 19.9 | 22.0 | 23.5 | 24.1 | 24.2 | 23.7 | 23.1 | 22.5 | 21.8 | 21.0 | 20.1 | 19.2 | 18.3 | 17.2 | 16.1 | 14.9 | 13.7 | 12.3 | 10.9 | 9.3 | 7.7 | 5.9 | 4.1 | 2.1 | 0.0 | 0.0 |
| Total change in accumulated debt ($B) | 2.5 | 2.6 | 3.0 | 3.5 | 3.1 | 2.8 | 2.4 | 2.0 | 1.6 | 0.6 | 0.1 | -0.5 | -0.6 | -0.6 | -0.7 | -0.8 | -0.8 | -0.9 | -1.0 | -1.0 | -1.1 | -1.2 | -1.3 | -1.4 | -1.4 | -1.5 | -1.6 | -1.7 | -1.9 | -2.0 | -2.1 | 0.0 |

**Notes:** Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

## APPENDIX F: OVERVIEW OF RISKS

Prepared by TBS staff, the following chart, as part of the May 2017 OFHP implementation update focused on the proposed legislation. It provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

The current submission, ~~Change of Law~~ Provincial Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" (page 16) as part of risk mitigating strategy.

*Global Adjustment Partial Refinancing:*

**Objective:** Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements.<br>• Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG.<br>• Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |
| A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Medium<br>**Risk Impact:** High<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and close monitoring of costs and changes in variables built into model.<br>• Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Moderate<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases.<br>• Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing. | Risk can be avoided by:<br>• Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure.<br><br>Risk can be mitigated by:<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.<br>• Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br><br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited.<br>• An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG. |
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and ongoing monitoring of costs and changes in variables built into model.<br>• Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

*Electricity social programs (Enhancing Electricity Support & Conservation Programs):*

**Objective:** Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Timescale:** 12 to 24 months<br><br>**Rationale:**<br>• The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate.<br>• Fiscal projection is highly dependent on factors which can fluctuate from year to year, including:<br>o electricity usage;<br>o distributions costs; and<br>o consumer consumption patterns that may change due to extreme weather or other factors.<br>• Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs.<br>o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models. |

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Mike Manning; Keley Katona (ENERGY) |
| **Cc:** | Gadi Mayman; Anthony Reiss (MGS); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY) |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 8:00:35 AM |

Hi Malle,

Thank you for your thorough and thoughtful review.

Just getting back to you now on your two comments:

- The TB analyst has asked whether to minute the attachment or to include key parameters of the term sheet in the minute – I'm inclined to stick with referring to the term sheet in the minute. The language in the term sheet was "litigated" enough that I fear misrepresenting any parameters when they are summarized for the purpose of a minute. I agree with you that recommending TB approve the Ministers entering into the agreement, based on the current term sheet, would remove the possibility of subsequent revisions to the term sheet.
- Attaching a draft of the OIC to refer to in the minute – I don't think this is required, nor is it typically done, but we could certainly provide the draft to James for his reference.

Anna

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

**Sent:** Tuesday, September 19, 2017 2:00 PM

**To:** Anna Strathy ; Tobias P. Whitfield (MOF) ; Ken Kandeepan ; Ronald Kwan ; Mike Manning ; Keley Katona (ENERGY)

**Cc:** Gadi Mayman ; Anthony Reiss (MGS) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (ENERGY)

**Subject:** RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Here are my comments on the analyst's note.

p. 1 Recommendations

- second recommendation, remove "to" after "Ministry of Energy"
- third recommendation, should this refer to the draft OIC that is attached. Don't know whether the TB submission itself references a draft OIC being attached?

p. 2 "What would trigger the protection agreement?"

- second bullet re: court decision, change wording from "invalid or unenforceable" to "invalid or ultra vires" to match most recent version of term sheet
- third bullet – the third event has now been inserted into the term sheet as "there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interst so that it can pay its funding obligations.

p. 4 See the comments in the proposed first minute asking whether there is a desire to minute the attachment or to include key parameters in minute only given the request for a "subject to revisions provision". I am not sure how we wish to answer this question. Putting in only key parameters would broaden the 2 Ministers' discretion to agree to revisions to the term sheet. Possibly if we were to do this, are the essential parameters really the "Protection Events", and "Obligation re: pay specified claims? Comments on this?

p. 4 Regarding second minute – should it reference a draft form of OIC attached?

Regarding the questions posed by the analyst, here is a start on some of those.

1. Third trigger is in now.
2. Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular

circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt [need description of interest rate swaps and what might be done here – fix floating rate debt – anything else?]

3. The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period….
4. The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 19, 2017 10:11 AM
**To:** Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Manning, Mike (OFA); Katona, Keley (MOF)
**Cc:** Mayman, Gadi (OFA); Reiss, Anthony (MOF)
**Subject:** Fwd: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Good morning,

Please find attached, the draft TBS Assessment note on the Provincial Protection Agreement. Please review and provide comments to me by 3:00pm this afternoon and I will consolidate comments for Gadi's review.

With respect to James' questions, I'll follow up separately and I expect some will be answered in the updated draft of the submission (with final term sheet).

Thank you, Anna

Sent from my iPhone

Begin forwarded message:

> **From:** "Strang, James (TBS)" <James.Strang@ontario.ca>
> **To:** "Anthony Reiss (MGS)" <Anthony.Reiss@ontario.ca>, "Pratima Gounden (ENERGY)" <Pratima.Gounden@ontario.ca>
> **Cc:** "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Anna Strathy" <Anna.Strathy@ofina.on.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>, "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Indira Komal (MCSCS)" <Indira.Komal@ontario.ca>, "Lenna Wichenko (MCSCS)" <Lenna.Wichenko@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>
> **Subject: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC**
>
> Hi,
> Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify.
    - Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope?
- What are derivative agreements? Payments under derivative agreements?
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market?
- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA?

Thanks in advance,
James Strang
416-327-2071

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Mike Manning; Keley Katona (ENERGY) |
| **Cc:** | Gadi Mayman; Anthony Reiss (MGS); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY) |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Tuesday, September 19, 2017 2:00:07 PM |

Here are my comments on the analyst's note.

p. 1 Recommendations

- second recommendation, remove "to" after "Ministry of Energy"
- third recommendation, should this refer to the draft OIC that is attached. Don't know whether the TB submission itself references a draft OIC being attached?

p. 2 "What would trigger the protection agreement?"

- second bullet re: court decision, change wording from "invalid or unenforceable" to "invalid or ultra vires" to match most recent version of term sheet
- third bullet – the third event has now been inserted into the term sheet as "there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interst so that it can pay its funding obligations.

p. 4 See the comments in the proposed first minute asking whether there is a desire to minute the attachment or to include key parameters in minute only given the request for a "subject to revisions provision". I am not sure how we wish to answer this question. Putting in only key parameters would broaden the 2 Ministers' discretion to agree to revisions to the term sheet. Possibly if we were to do this, are the essential parameters really the "Protection Events", and "Obligation re: pay specified claims? Comments on this?

p. 4 Regarding second minute – should it reference a draft form of OIC attached?

Regarding the questions posed by the analyst, here is a start on some of those.

1. Third trigger is in now.
2. Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt [need description of interest rate swaps and what might be done here – fix floating rate debt – anything else?]
3. The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period….
4. The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]

**Sent:** September 19, 2017 10:11 AM

**To:** Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Manning, Mike

(OFA); Katona, Keley (MOF)
**Cc:** Mayman, Gadi (OFA); Reiss, Anthony (MOF)
**Subject:** Fwd: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Good morning,
Please find attached, the draft TBS Assessment note on the Provincial Protection Agreement. Please review and provide comments to me by 3:00pm this afternoon and I will consolidate comments for Gadi's review.
With respect to James' questions, I'll follow up separately and I expect some will be answered in the updated draft of the submission (with final term sheet).
Thank you, Anna

Sent from my iPhone

Begin forwarded message:

> **From:** "Strang, James (TBS)" <James.Strang@ontario.ca>
> **To:** "Anthony Reiss (MGS)" <Anthony.Reiss@ontario.ca>, "Pratima Gounden (ENERGY)" <Pratima.Gounden@ontario.ca>
> **Cc:** "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Anna Strathy" <Anna.Strathy@ofina.on.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>, "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Indira Komal (MCSCS)" <Indira.Komal@ontario.ca>, "Lenna Wichenko (MCSCS)" <Lenna.Wichenko@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>
> **Subject: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC**
>
> Hi,
> Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.
> Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).
>
> - Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify.
>   - Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope?
> - What are derivative agreements? Payments under derivative agreements?
> - Does the Province have any consideration/protection regarding the

subsequent form of obligations, securities/derivatives that can be brought/offered to the market?

- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA?

Thanks in advance,

James Strang
416-327-2071

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | James Strang (MOF); Jonathan Tekle (CAB) |
| **Cc:** | "Veinot, Cindy (TBS)"; "Hosick, Sarah (TBS)"; Ronald Kwan; Afshin Malekzadeh (MOHLTC); Chris Skubel (MGS); Indira Komal (MCSCS); Lenna Wichenko (MCSCS); Paul Kaufman (MOHLTC); Nick Smook (MOF); Anthony Reiss (MGS); Pratima Gounden (ENERGY); Ken Kandeepan; Gadi Mayman; Mike Manning; Steen Hume (CAB); Hilary Cox (ENE); Keley Katona (ENERGY) |
| **Subject:** | RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 3:26:16 PM |
| **Attachments:** | TB20 Submission_Provincial Protection Agreement_V10_clean.docx<br>TB20 Submission_Provincial Protection Agreement_V10_track_change.pdf |

Hi James, Jonathan,

At this morning's 8am meeting with Energy, Deputy Thompson requested a few small tweaks to the submission prior to Minister Sousa's briefing tomorrow. Please find attached, a clean and track-change version of the updated submission.

In addition to the Deputy's comments, we have also updated the peak debt estimate (and associated IOD costs) to reflect the latest information provided by the Ministry of Energy.

Happy to discuss.

Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Wednesday, September 20, 2017 11:00 AM
**To:** James Strang (MOF)
**Cc:** Veinot, Cindy (TBS) ; Hosick, Sarah (TBS) ; Ronald Kwan ; Afshin Malekzadeh (MOHLTC) ; Chris Skubel (MGS) ; Indira Komal (MCSCS) ; Lenna Wichenko (MCSCS) ; Paul Kaufman (MOHLTC) ; Nick Smook (MOF) ; Anthony Reiss (MGS) ; Pratima Gounden (ENERGY) ; Ken Kandeepan ; Gadi Mayman ; Mike Manning
**Subject:** RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi James,

Please find attached, consolidated comments and edits from the OFA, Energy, and MOF Legal, as well as responses to your questions, below.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, September 19, 2017 9:36 AM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Pratima Gounden (ENERGY) <Pratima.Gounden@ontario.ca>
**Cc:** Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Indira Komal (MCSCS) <Indira.Komal@ontario.ca>; Lenna Wichenko (MCSCS) <Lenna.Wichenko@ontario.ca>; Paul Kaufman (MOHLTC) <Paul.Kaufman@ontario.ca>; Nick Smook (MOF) <Nick.Smook@ontario.ca>
**Subject:** Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi,

Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-

brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify. The working title of the agreement is the Provincial Protection Agreement; however it is still subject to change.
    - Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope? The third trigger is in and it's been narrowed to ensure only a change that adversely impacts the ability of the Financing Entity to collect payments would trigger the protection agreement.
- What are derivative agreements? Payments under derivative agreements? Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt.
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market? The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.
- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA? The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

Thanks in advance,
James Strang
416-327-2071

# PROVINCIAL PROTECTION AND ASSURANCES AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; or
- Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.

In the event the protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) to enter into a guarantee or indemnity that would increase the contingent liabilities of Ontario. The Minister of Finance has given Section 28 approval for the Minister of Energy, together with the Minister of Finance to recommend the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $20B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.0B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in the history of our province.

- We have heard from Ontarians across the province that the price of electricity has risen too quickly: that's why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- Our government is following through on its commitment to balance the books as announced in the 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.
- This agreement is a key step in lowering electricity costs province-wide as part of the Fair Hydro Plan.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees, as necessary. Reactive messaging contingent on legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017*, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

# APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or |

| | |
|---|---|
| | (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

# PROVINCIAL PROTECTION AND ASSURANCES AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## 3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable; ~~and~~ or
- Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations.

In the event the protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) to enter into a guarantee or indemnity that would increase the contingent liabilities of Ontario. The Minister of Finance has given Section 28 approval for the Minister of Energy, together with the Minister of Finance to recommend the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

## 6. RISKS:

If the protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $~~24B to $26~~20B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.0~~3~~B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

**Commented [AS1]:** Using updated forecast of peak debt at $20B and interest rate range of 4.2% to 5.0%

It is important to note that, if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in ~~Ontario's~~ the history of our province.

- We have heard from Ontarians across the province that the price of electricity has risen too quickly: ~~, which is~~ that's why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- ~~The~~ Our government is following through on its commitment to balance the books as announced in ~~its~~ the 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.
- This agreement is a key step in lowering electricity costs province-wide as part of the Fair Hydro Plan.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees, as necessary. Reactive messaging contingent ~~upon~~ on legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

(a) Approve that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the *Ontario Fair Hydro Plan Act, 2017*, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

## APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends |

| | |
|---|---|
| | the Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*);<br><br>(5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,<br><br>in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

| | |
|---|---|
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity. |
| **Optional Assumption:** | At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anis Hirani |
| **Cc:** | Mike Manning |
| **Subject:** | RE: Provincial Support Agreement - OPG |
| **Date:** | Monday, September 18, 2017 9:57:21 AM |

---

I have invited also:
Blakes - Steve Ashbourne
Energy Legal – Tom McKinlay and Alena Thouin
-----Original Appointment-----
**From:** Hanslep, Malle (MOF) **On Behalf Of** Anis Hirani
**Sent:** September 18, 2017 9:37 AM
**To:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY)
**Subject:** FW: Provincial Support Agreement - OPG
**When:** September 18, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Boardroom Exec - 1 Dundas Street West, Suite 1400
-----Original Appointment-----
**From:** Anis Hirani [mailto:Anis.Hirani@ofina.on.ca]
**Sent:** September 18, 2017 9:07 AM
**To:** Anis Hirani; Manning, Mike (OFA); 'HAHN PARKER Janet -TREASURY'; 'LEE John -TREASURY'; RYFA Ken -TREASURY; Kandeepan, Ken (OFA); Strathy, Anna (OFA); WONG Leslie -LAWDIV; Kim, John (OFA); Kwan, Ronald (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Bell, Martine (OFA); Georgakakos, Angie (OFA); Yatawara, Rasika (OFA); Eden Amare
**Subject:** Provincial Support Agreement - OPG
**When:** September 18, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Boardroom Exec - 1 Dundas Street West, Suite 1400
Please note change of Boardroom.
Attendees
OFA
Mike Manning
Ken Kandeepan
Ron Kwan
Anna Strathy
John Kim
Legal
Malle Hanslep
Tobias P. Whitfield
OPG
John Lee
Ken Ryfa
Les Wong
Contact: Anis Hirani (16) 325-5890

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | John Kim |
| **Cc:** | Ronald Kwan; Gadi Mayman; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Mike Manning |
| **Subject:** | RE: Provincial Support Agreement update |
| **Date:** | Wednesday, September 06, 2017 5:09:30 PM |

Thanks John, just to be clear what we determined at the meeting yesterday was to ensure that Energy was in fact comfortable with the OFA sharing the latest version of OPG's term sheet for the guarantee **including the comments and edits from Blake's**. These, while not substantially amending the term sheet does make it narrower.

Let us know

Thanks

Ken k

---

**From:** John Kim
**Sent:** Wednesday, September 06, 2017 5:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Mike, Ken,

I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

---

**From:** John Kim
**Sent:** Tuesday, September 05, 2017 6:08 PM
**To:** Steen Hume (CAB) <Steen.Hume@ontario.ca>

**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Cheryl Carson (ENERGY) <Cheryl.Carson@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, August 31, 2017 2:18 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
**Subject:** Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | John Kim; Mike Manning; Ken Kandeepan |
| **Cc:** | Ronald Kwan; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | RE: Provincial Support Agreement update |
| **Date:** | Wednesday, September 06, 2017 5:19:52 PM |

Given the time sensitivity of this, in order to ensure that we make it to TB on the 26th, I'm comfortable with Mike not just having discussions with OPG, but sharing the draft with them, as long as you tell them that this hasn't yet been fully vetted by Energy. If there are show-stoppers for OPG, which I'm hoping there aren't, we really need to know about them this week.

Gadi

---

**From:** John Kim
**Sent:** Wednesday, September 06, 2017 5:02 PM
**To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Mike, Ken,

I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

---

**From:** John Kim
**Sent:** Tuesday, September 05, 2017 6:08 PM
**To:** Steen Hume (CAB) <Steen.Hume@ontario.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY)

<Scott.Nelms@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Cheryl Carson (ENERGY) <Cheryl.Carson@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, August 31, 2017 2:18 PM
**To:** John Kim <John.Kim@ofina.on.ca>
**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
**Subject:** Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ken Kandeepan
**To:** Ronald Kwan; Anna Strathy
**Cc:** Gadi Mayman; Ken Kandeepan; Mike Manning
**Subject:** RE: QA AG Report OFHP Technical Briefing
**Date:** Sunday, October 15, 2017 10:45:16 AM

---

Agreed with Ron's comment ( it's the penultimate question). My preference would be also to emphasize the fact that placing the responsibility for the financing costs on the base is a long and well established policy of the Government and I would make this point in the response to the first question.
The fourth para in the response could be extended as follows: " Having the beneficiaries of a particular initiative pay the costs of financing is in accordance with a long and well established government policy. For example, Infrastructure Ontario's loans to the municipal sector are made at rates that approximate the external borrowing costs of a particular municipality. Likewise, loans to OPG from the Province or its agencies use a market proxy to determine applicable interest rates, despite the lower borrowing costs of the Province."
If Gadi agrees he can raise the issue tomorrow at the briefing.
Thanks
Ken k

---

**From:** Ronald Kwan
**Sent:** Sunday, October 15, 2017 10:04 AM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Ken Kandeepan ; Mike Manning
**Subject:** Re: QA AG Report OFHP Technical Briefing

Hi Anna,
On a quick skim on the iPhone, they did not correct the name of the OFA ("Financing", not "Financial").
Ron

On Oct 15, 2017, at 8:32 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, final Q&As and technical deck. I haven't done a thorough comparison, but it looks as though our edits have been accepted.
> Gadi, these will be the materials used at tomorrow's 8am meeting.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> > **Date:** October 14, 2017 at 3:15:22 PM EDT
> > **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, Anna Strathy

<Anna.Strathy@ofina.on.ca>, "Patrick Laughton (MOF)"
<Patrick.Laughton@ontario.ca>, "Hosick, Sarah (TBS)"
<Sarah.Hosick@ontario.ca>, "Hilary Cox (ENE)"
<Hilary.Cox@ontario.ca>
**Subject: QA AG Report OFHP Technical Briefing**

Hi Folks,

Attached are the QAs for the AG OFHP Report. This version incorporates input from OFA. Attached is also the TBS QAs, which we've kept as a stand-alone product since it's very technical and specific to TBS (also attached).

These will be used at Monday morning's meeting along with the technical deck which is still being finalized.

Thanks,
Martin

**From:** Ken Kandeepan
**To:** Anna Strathy; Ronald Kwan; Mike Manning
**Subject:** RE: Regroup on Provincial Protection Agreement
**Date:** Tuesday, September 19, 2017 8:51:06 AM

---

I have a tele conference from 9.30 to 10.30, however, FTD managers are participating so if that is the ideal time for everyone else I can make myself available. I am free after 10.30 as well.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Tuesday, September 19, 2017 8:48 AM
**To:** Ronald Kwan ; Mike Manning ; Ken Kandeepan
**Subject:** Regroup on Provincial Protection Agreement
I thought we may want to regroup with Gadi this morning on yesterday's meeting with OPG and Tory's. Could you please advise of your availability between 9:30am and 12pm?
Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**From:** Mike Manning
**To:** Anna Strathy; Ronald Kwan; Ken Kandeepan
**Subject:** RE: Regroup on Provincial Protection Agreement
**Date:** Tuesday, September 19, 2017 8:49:17 AM

---

9:30 to 10:30 for me.
Mike

---

**From:** Anna Strathy
**Sent:** Tuesday, September 19, 2017 8:48 AM
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** Regroup on Provincial Protection Agreement

I thought we may want to regroup with Gadi this morning on yesterday's meeting with OPG and Tory's. Could you please advise of your availability between 9:30am and 12pm?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**From:** Anna Strathy
**To:** Ronald Kwan; Ken Kandeepan
**Cc:** Mike Manning
**Subject:** RE: Regroup on Provincial Protection Agreement
**Date:** Tuesday, September 19, 2017 8:55:01 AM

---

Thanks everyone. We'll do 9:45am. Invite to follow.

---

**From:** Ronald Kwan
**Sent:** Tuesday, September 19, 2017 8:54 AM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Re: Regroup on Provincial Protection Agreement

Hi,

I have internal meetings that I could move, so I'm available.

Ron

On Sep 19, 2017, at 8:51 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> I have a tele conference from 9.30 to 10.30, however, FTD managers are participating so if that is the ideal time for everyone else I can make myself available. I am free after 10.30 as well.
>
> Thanks
>
> Ken k
>
> ---
>
> **From:** Anna Strathy
> **Sent:** Tuesday, September 19, 2017 8:48 AM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Regroup on Provincial Protection Agreement
>
> I thought we may want to regroup with Gadi this morning on yesterday's meeting with OPG and Tory's. Could you please advise of your availability between 9:30am and 12pm?
>
> Anna
>
> Anna Strathy
> Special Policy Advisor to CEO
> Ontario Financing Authority
> 1 Dundas Street West, 14th Floor
> 416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Veinot, Cindy (TBS); Anna Strathy; Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | RE: Response to OPG |
| **Date:** | Friday, October 13, 2017 3:49:23 PM |

Hi Toby

These reflect that changes we discussed yesterday and can be sent out subject to any comments from Mike and Carlos. However, as per my conversation with Malle and subsequently with Gadi, we are running out of time and need to come to a meeting of the minds with OPG on this issue.

To that extent perhaps we can move towards finalizing this issue sometime next week and in order to do so indicate in the covering email to OPG that we would like them to review the September 27th document from the perspective of what impacts on the integrity of the proposed accounting treatment and get back to us hopefully Monday.

That will provide us with a baseline that can be either accepted or tweaked within reasonable limits allowing the process to move forward. With regard to the "failsafe" it may be useful to mention in the covering email that we are open to making changes.

I would also request that we include if possible in the email that the incorporation documents of the Financing Entity include a clause that prohibits the FE from issuing debt that contravenes the terms of the Guaranty. This along with the attestation or certificate for each debt issue should in my opinion constitute a reasonable safeguard of the Province's interests. Not sure whether this will also impact on the integrity of the accounting but we won't know until we ask.

Thanks

Ken k

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Friday, October 13, 2017 3:12 PM
**To:** Malle Hanslep (MOF) ; Veinot, Cindy (TBS) ; Anna Strathy ; Mike Manning ; Ronald Kwan ; Ken Kandeepan ; Scott Nelms (ENERGY) ; James Devine ; Carlos Yep ; Cengarle, John (MOF) ; Keley Katona (ENERGY) ; Mark Donaldson (MOF) ; Usman Zahid ; Anis Hirani ; John Kim ; Tom McKinlay (MAG) ; Thouin, Alena (ENERGY) ; 'stephen.ashbourne@blakes.com' ; Hresa Gavaris
**Cc:** Gadi Mayman ; John Psinas
**Subject:** RE: Response to OPG

Please see some proposed changes to the note to be sent to OPG. They are tracked to Stephen's document circulated in advance of yesterday's meeting.

Please let me know if you have any additional comments or concerns.

The intention would be to send this out to OPG by end of day, so please provide comments asap.

Thanks

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)

**Sent:** October 13, 2017 1:34 PM
**To:** Veinot, Cindy (TBS); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,

Thanks for your response. We appreciate how busy you are and that you are reviewing the materials. We are planning to respond to OPG today.

We wanted to touch base with you again before we send the response because OPG had the question "Please also advise if the Province's accountants have reviewed the proposal." In their email to the Province so wanted to respond to that along the lines of the following if it's ok with you.

"The Province's accountants are involved in this process and are also reviewing the proposal."

Thanks.

Malle

---

**From:** Veinot, Cindy (TBS)
**Sent:** October 13, 2017 9:31 AM
**To:** Hanslep, Malle (MOF); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don't think you should hold up that process for my review. I will review the documents, but can't commit to providing comments back today.

Thanks,

Cindy

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 9:13 AM
**To:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,

I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.

I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.

Thank you for your assistance – we know that you are pressed with many priority items.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to moderate

Please call Hresa at 5-8002 upon arrival

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Malle Hanslep (MOF); Veinot, Cindy (TBS); Anna Strathy; Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | RE: Response to OPG |
| **Date:** | Friday, October 13, 2017 3:11:55 PM |
| **Attachments:** | 12915947-v3-Torys comments on Change of Law Protection Agreement (10617) (MOF Legal).docx |

Please see some proposed changes to the note to be sent to OPG. They are tracked to Stephen's document circulated in advance of yesterday's meeting.
Please let me know if you have any additional comments or concerns.
The intention would be to send this out to OPG by end of day, so please provide comments asap.
Thanks
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 1:34 PM
**To:** Veinot, Cindy (TBS); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,
Thanks for your response. We appreciate how busy you are and that you are reviewing the materials. We are planning to respond to OPG today.
We wanted to touch base with you again before we send the response because OPG had the question "Please also advise if the Province's accountants have reviewed the proposal." In their email to the Province so wanted to respond to that along the lines of the following if it's ok with you.
"The Province's accountants are involved in this process and are also reviewing the proposal."
Thanks.
Malle

---

**From:** Veinot, Cindy (TBS)
**Sent:** October 13, 2017 9:31 AM
**To:** Hanslep, Malle (MOF); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don't think you should hold up that process for my

review. I will review the documents, but can't commit to providing comments back today.
Thanks,
Cindy

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 9:13 AM
**To:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,
I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.
I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.
Thank you for your assistance – we know that you are pressed with many priority items.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate
Please call Hresa at 5-8002 upon arrival

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

[NOTE TO DRAFT: CONFIRM THAT TORYS IS REFERRING TO THE OFA/MOE PROPOSAL FROM SEPTEMBER 27TH. ]

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

**Accounting Issues:**
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

[There is minimal oversight and input from the Province so long as the pre-agreed scope and parameters are adhered to.]

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

[The proposal is that basic information regarding an incurrence will be provided to enable the province to (1) understand the nature and scope of the incurrence, to enable the Province to address ~~accounting, reporting and~~ internal governance considerations and (2) to be satisfied that the proposed incurrences are in-line with the pre-agreed parameters (the "~~Objectives~~Parameters"). The intention is not to curtail incurrences that follow the pre-agreed approach. The timing of the notice to the Province may be a point of discussion.]

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
[As the entity running the program, OPG will be expected to provide the province with information sufficient to enable the province to ~~achieve~~ make sure any incurrence falls inside the ~~Objectives~~Parameters. The delivery of a certificate in an agreed form, just prior to the time of the incurrence, is meant to create a brightline test for the financing entity's counterparties to know that, so long as the certificate has been delivered (even if it's inaccurate), the Province will be bound. As you suggest below, any inaccuracy will give rise to considerations between the province and OPG. The delivery of the certificate at the time of an incurrence is considered an important due diligence confirmation for the province.
What is the basis for E&Y expressing a reservation regarding the province having access to underlying information about the "approved obligations", which in turn will define the scope of the

province's own obligations if called upon under the change of law protection agreement (CLPA)?]
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
[Any surety in a similar circumstance would want to know the nature and extent of the obligations incurred and to be incurred. That information is intended to allow the province to meet the objectives. Please provide an alternative proposal that meets OPGs requirements and still provides adequate information for the Province.]
-the negative pledge with respect to the exercise of certain options on the debt
[The idea is that if there is optionality in favour of the financing entity, and the exercise would affect the payment profile under the CLPA, such an exercise following a Protection Event should not affect the Province's payment obligations. In effect, the payment schedule will crystalize and cannot be accelerated or extended once the province becomes obligated to pay, following a Protection Event.]
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement
[The Province needs to understand the overall credit picture of the financing entity since it will become a creditor (through subrogation) if it is called on to perform. Exclusions are narrowly defined and should be minimal in practice.]

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have.
[These checks and balances are in-line with the province not writing a "blank cheque" in relation to future incurrences. Prudent sureties would be expected to pursue the objectives - indeed to do less could be evidence of interdependence and non-arm's length terms, which presumably would be unhelpful to E&Y's analysis. ] Please also advise if the Province's accountants have reviewed the proposal.
[The Province's accountants are involved in this process and are also reviewing the proposal~~The Province's accounting professionals are involved in this process, including in reviewing these responses~~]

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated.

[The OFHPA will involve very significant and complex financings. The process is intended to provide an appropriate level of third party enquiry given the size and scale of the financing program to the province and in order to ensure the issuances are within the Parameters. ~~meet the objectives~~] From our perspective, as drafted, OPG will likely have to seek Provincial approval
[No approval is contemplated or expected by the Province, except if the incurrence is outside of the pre-agreed boundaries.~~ The onus will be on the Province to review the summary materials provided by OPG and to identify any material departures from the pre-agreed approach to incurrences~~] on each debt issuance (which weakens the accounting as discussed above)
[An explanation of the relevant accounting principles that E&Y has expressed concern about would assist the province to understand E&Y'S concerns. ~~Is there an accounting statement or publication that elaborates on these matters?~~ Also, a detailed list of any particular troublesome requirements would be helpful, with drafting suggestions as appropriate] [The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. [From the dealers' perspective, the three listed requirements (namely, (1) quantum under the program limit

(2) delivery of the OPG certificate (3) absence of contrary notice from the Province) can be easily and objectively verified by the dealers. These process requirements should be reflected in the incurrence procedures as a check/balance at the relevant time, given that the province will not otherwise be directly involved in the incurrence process but will be obligated under the CLPA] Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. [As noted above, the three listed requirements can be easily and objectively confirmed by the dealers prior to a closing. inaccuracies or other failures within the certification process will not negate the Province's obligations] We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met.

[As noted, this due diligence check/balance is how the province will ~~meet the objectives~~ensure the issuances satisfy the Parameters. It is anticipated that the Ministers will see this process as significant to the exercise of their authorities under OFHPA 5(3). Ultimately, the Province will depend on OPG, which is why the delivery of a certificate, without being impugned by an accuracy, is the contemplated adherence condition - rather than making the confirmation of certificate accuracy a condition, which we assume would be unwelcome by the underwriters.] The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

[The Province wants an actual certificate to be delivered to it (not just the indenture trustee) as part of the closing process. Also, the program limit and failsafe disapproval notice are considered to be important safeguards for the province]

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.
- [In the case of details not known at the time the OPG certificate is to be delivered (which will be expected to occur close to closing), it should be sufficient to indicate the process by which those details will be finalized. For example, it would be sufficient to say "interest rates to be set on or about [date] based on underwriting syndicate pricing indications".]

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- [The proposal uses the specific defined terms from the OFHPA and regulation, in order to tie back to the statute and appropriately narrow the scope to the obligations that are reasonably known to require protection from the province. Considerable thought has been given to the approach reflected in the province's proposal. The Province wishes to focus on each inclusion that requires the support arrangements, which should then be net of

available/free cash flows, set-offs, etc. Please provide specific comments on any specific items of concerns.]

- We'd like to understand the reason OPG's management fees have been excluded. [This is still an open question under consideration.] We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? [Under consideration] Please advise why taxes are being excluded?

[CRA does not require/is not entitled by law to the benefit of the protection arrangement. Please explain the logic of the request to include taxes]

- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

[For the Province's support arrangement to apply to an obligation, the quantum of the obligation must be factored into the program maximum test. if the obligation is a contingent obligation, the province's obligations must be capped so that the amount of the cap can be factored into the program limit test]

- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

[In the interest of time, please provide any other detailed comments you may have on the September 27th version of the proposal as soon as possible]

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Veinot, Cindy (TBS); Anna Strathy; Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | RE: Response to OPG |
| **Date:** | Friday, October 13, 2017 1:33:46 PM |

Hi Cindy,
Thanks for your response. We appreciate how busy you are and that you are reviewing the materials. We are planning to respond to OPG today.
We wanted to touch base with you again before we send the response because OPG had the question “Please also advise if the Province’s accountants have reviewed the proposal.” In their email to the Province so wanted to respond to that along the lines of the following if it’s ok with you.
“The Province’s accountants are involved in this process and are also reviewing the proposal.”
Thanks.
Malle

---

**From:** Veinot, Cindy (TBS)
**Sent:** October 13, 2017 9:31 AM
**To:** Hanslep, Malle (MOF); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don’t think you should hold up that process for my review. I will review the documents, but can’t commit to providing comments back today.
Thanks,
Cindy

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 9:13 AM
**To:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,
I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.
I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province’s response.

Thank you for your assistance – we know that you are pressed with many priority items.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.
-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to moderate

Please call Hresa at 5-8002 upon arrival

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Veinot, Cindy (TBS) |
| **To:** | Malle Hanslep (MOF); Anna Strathy; Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | RE: Response to OPG |
| **Date:** | Friday, October 13, 2017 9:31:37 AM |

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don't think you should hold up that process for my review. I will review the documents, but can't commit to providing comments back today.
Thanks,
Cindy

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 9:13 AM
**To:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,
I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.
I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.
Thank you for your assistance – we know that you are pressed with many priority items.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.
-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel

**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to moderate

Please call Hresa at 5-8002 upon arrival

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Veinot, Cindy (TBS); Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris |
| **Cc:** | Gadi Mayman; John Psinas |
| **Subject:** | RE: Response to OPG |
| **Date:** | Friday, October 13, 2017 9:13:02 AM |

Hi Cindy,
I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.
I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.
Thank you for your assistance – we know that you are pressed with many priority items.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.
-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate
Please call Hresa at 5-8002 upon arrival

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | "ASHBOURNE, STEPHEN" |
| **Cc:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Mike Manning; Carlos Yep; Ronald Kwan; Anna Strathy |
| **Subject:** | RE: Response to OPG |
| **Date:** | Sunday, October 15, 2017 11:27:46 AM |

Thanks Stephen for the clarification.
My objective in putting forward this suggestion was to eliminate any possibility of the FE issuing debt that may contravene the Protection Agreement (PA). As it stands, theoretically the FE can issue debt that falls outside the PA though it will not be guaranteed by the Province. The problem conceivably arises with regard to any debt issues that are very close to the line drawn by the PA and the consequent need for due diligence on the part of the Province on an issue by issue basis, all of which can be eliminated or at least alleviated by the incorporation of negative covenants.
Pity that it is not possible.
Thanks
Ken k

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** Friday, October 13, 2017 6:55 PM
**To:** Ken Kandeepan ; Tobias P. Whitfield (MOF) ; Malle Hanslep (MOF)
**Subject:** RE: Response to OPG
Ken, it is not advisable to incorporate negative covenants in the FE's incorporation documents. That approach would raise *ultra vires* issues, which could cast doubt on the efficacy of particular debt issues. I was anticipating negative covenants in the Change of Law Protection Agreement. Happy to discuss.
Steve
Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** Friday, October 13, 2017 3:49 PM
**To:** Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Veinot, Cindy (TBS); Anna Strathy; Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hresa Gavaris
**Cc:** Gadi Mayman; John Psinas
**Subject:** RE: Response to OPG
Hi Toby
These reflect that changes we discussed yesterday and can be sent out subject to any comments from Mike and Carlos. However, as per my conversation with Malle and subsequently with Gadi, we

are running out of time and need to come to a meeting of the minds with OPG on this issue.
To that extent perhaps we can move towards finalizing this issue sometime next week and in order to do so indicate in the covering email to OPG that we would like them to review the September 27th document from the perspective of what impacts on the integrity of the proposed accounting treatment and get back to us hopefully Monday.
That will provide us with a baseline that can be either accepted or tweaked within reasonable limits allowing the process to move forward. With regard to the "failsafe" it may be useful to mention in the covering email that we are open to making changes.
I would also request that we include if possible in the email that the incorporation documents of the Financing Entity include a clause that prohibits the FE from issuing debt that contravenes the terms of the Guaranty. This along with the attestation or certificate for each debt issue should in my opinion constitute a reasonable safeguard of the Province's interests. Not sure whether this will also impact on the integrity of the accounting but we won't know until we ask.
Thanks
Ken k

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Friday, October 13, 2017 3:12 PM
**To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'stephen.ashbourne@blakes.com' <stephen.ashbourne@blakes.com>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>
**Subject:** RE: Response to OPG
Please see some proposed changes to the note to be sent to OPG. They are tracked to Stephen's document circulated in advance of yesterday's meeting.
Please let me know if you have any additional comments or concerns.
The intention would be to send this out to OPG by end of day, so please provide comments asap.
Thanks
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 1:34 PM
**To:** Veinot, Cindy (TBS); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis

(OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,

Thanks for your response. We appreciate how busy you are and that you are reviewing the materials. We are planning to respond to OPG today.

We wanted to touch base with you again before we send the response because OPG had the question "Please also advise if the Province's accountants have reviewed the proposal." In their email to the Province so wanted to respond to that along the lines of the following if it's ok with you.

"The Province's accountants are involved in this process and are also reviewing the proposal."

Thanks.

Malle

---

**From:** Veinot, Cindy (TBS)
**Sent:** October 13, 2017 9:31 AM
**To:** Hanslep, Malle (MOF); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don't think you should hold up that process for my review. I will review the documents, but can't commit to providing comments back today.

Thanks,

Cindy

---

**From:** Hanslep, Malle (MOF)
**Sent:** October 13, 2017 9:13 AM
**To:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** RE: Response to OPG

Hi Cindy,

I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.

I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.

Thank you for your assistance – we know that you are pressed with many priority items.

Malle

Malle Hanslep
Deputy Director

Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 12, 2017 12:16 PM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA)
**Cc:** Mayman, Gadi (OFA); John Psinas
**Subject:** Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
**When:** October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to moderate

Please call Hresa at 5-8002 upon arrival

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Cc:** | Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Subject:** | RE: Review Draft Guarantee & Procedures Document \| OFA, OPCD, MOF, Legal Counsel |
| **Date:** | Thursday, November 02, 2017 9:43:54 AM |
| **Attachments:** | 23239361-v6-CLPA - Process Agreement.docx<br>23239360-v8-CLPA - Protection Agreement.docx |

Please find attached preliminary drafts of the Protection Agreement and the Process Agreement for discussion at our meeting this afternoon.

Note that these drafts contain a number of issues that are still under consideration and up for discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 2, 2017 8:31 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas
**Cc:** Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel
**When:** November 2, 2017 12:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

**Nov 2: Rescheduled from 10:00am to 12:00pm**

MOF Legal is expecting a second draft between 9 and 10am today. The later meeting time will allow time to review prior to discussing.

Lunch will be provided

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this

message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**Internal Draft: November 2, 2017**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**"), is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM [established] the Financing Entity as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreement and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act and the OIC, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity or the Financing Entity Trustee**

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.07 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.08 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.09 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement**

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

**1.10 Non-Business Days**

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

**1.11 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than ■ Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of

the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than ■ Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of such analysis and assessment.

(c) Not less than ■ Business Days prior to any proposed change, addition or supplement to a Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change, addition or supplement to the Transaction Document.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns and any related tax assessment not more than ■ Business Days after such a tax return or tax assessment is required to be filed under applicable law.[1]

**2.02 Covenants**

(a) OPG shall, as the FSM, cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

[1] Note: The tax documents to be provided to the Province are under consideration.

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not, without the prior written consent of the Province:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;

(C) consolidate or merge with or into any other Person;

(D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;

(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;

(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or

(H) voluntarily dissolve or liquidate.

(b) OPG shall:

(i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension

right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

(iv) ensure that any disclosure (including any Disclosure Document) that refers to or describes the terms, effect or adherence of or to this Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used) without the prior written consent of the Province.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, not less than ■ Business Days prior to the incurrence or any amendment of a Primary Obligation, setting out the following with respect to the Primary Obligation:

(a) the material terms of the Funding Obligations pertaining to principal amount, pricing and third party fees;[2]

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

[2] Note: Level of detail required by the Province is under consideration. Province to consider whether it would like further details regarding Principal Obligations, Redemption Obligations, Interest Obligations, Hedging Obligations, Third Party Expense Obligations or Other Funding Obligations. In desirable, particulars regarding Hedging Obligations and the market in which notes are issued to be considered.

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) if the Primary Obligation is a [borrowing], confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

**3.02 Acknowledgment**

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) has been provided to the Province in accordance with Subsection 2.01(c); and

(b) has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;

(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of

the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.

(b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the applicable Financing Plan (the "**Initial Forecast**"). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**").

(d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.

(c) OPG has been validly appointed, and has irremovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the

Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or the Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

## ARTICLE VI
## ELECTION TO ASSUME APPROVED OBLIGATIONS

### 6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly

complete and deliver to OPG a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

**6.03 Settlement of Terms**

Within ■ Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether

or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

### 6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[3]

### 6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity, permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.[4]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement;

(b) any representation or warrant made by OPG in this Agreement, or any certification made in a Process Certificate, proves to be incorrect on the date made; or

[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

[4] Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

(c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

**7.02 Notice on Breach Event**

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right, upon written notice to OPG at its option, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide notice to the Indenture Trustee that a Breach Event has occurred and, in accordance with the Change of Law Protection Agreement, that the Limited Guarantee does not and will not apply to any Primary Obligations that may thereafter be incurred or amended by or on behalf of the Financing Entity.[5]

## ARTICLE VIII
## MISCELLANEOUS

**8.01 Term of Agreement**

This Agreement will continue for the term of the Change of Law Protection Agreement.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]

[5] NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.

Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Confidentiality**

[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.]

**8.07 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Administrative Agent**" means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

["**Administrative Services Agreement**" means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.][6]

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

[6] Note: To be confirmed if required.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation [as of the date of this Agreement].

"**Financing Entity**" means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(b).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(b).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

["**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

["**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.][7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected,

including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF ELECTION NOTICE**

**(form of Assumption Agreement to be attached, once settled)**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]**

**AND**

**ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER**

**AND**

**[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE**

# CHANGE OF LAW PROTECTION AGREEMENT

**Dated as of [■], 2017**

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

## RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations secured or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM [established] the Financing Entity as a "financing entity"[1] (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence

[1] Note to Draft: Consideration is being given by MOE to possible changes to the Regulation to accommodate the proposed use of a "trust", as a "financing entity".

Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 Trustee to act in accordance with the Trust Indenture**

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

**1.03 Proof of Approved Obligations**

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

**1.04 Limitation on Rights of and Actions by Specified Creditors**

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

**1.05 Province Retains Rights of Beneficiaries**

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

**1.06 Effect of Headings**

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

**1.07 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

**1.08 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.09 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**1.10 Proceedings Against the Crown Act**

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

**1.11 Attornment**

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

**1.12 Counterparts; Electronic Delivery**

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

**1.13 Change of Law Protection Agreement Referred to in the Trust Indenture**

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.15 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

**1.16 Interest Act**

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (a) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (b) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

**1.17 Currency**

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

**1.18 References to Acts of the Financing Entity Trustee**

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

**1.19 Judgment Currency**

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.18 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

## ARTICLE II
## AGREEMENT TO PERFORM APPROVED OBLIGATIONS

### 2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**") to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and [(ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.][3]

[2] Note: Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations" which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligation and an "investment interest" is therefore crucial. Unfortunately, the nexus is not straightforward. Blakes is considering how to more precisely connect these concepts.

[3] Note: OFA to confirm whether the Limited Guarantee will extend to require the Province to fill sinking fund and collateral accounts during the period when the Province is required to make payments. If not, then we will need to consider the impact on ratepayers and the potential impact on the CEA calculations, which will have been based originally on these deposits being made during particular reference periods.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

**2.02 Gross-up**

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.][4]

**2.03 Absence of Set-off**

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

**2.04 Payment into Collection Account in Satisfaction**

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.[5] Upon a payment having been made by or on behalf of the Province into

[4] Province to advise on extension of a tax gross up. We assume this is necessary, although we have not discussed it specifically and it may be that we delete this provision on the basis that the determination of a tax gross up (and the Province's liability for it) will be based on the inclusion of that concept in the Trust Indenture itself.

[5] Note: This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently. To be discussed with Torys.

the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[6].

**2.05 Certain Waivers**

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

**2.06 Additional Security**

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

**2.07 Continuing Liability of the Province**

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the

[6] Note: Consider if Beneficiary rights under Obligations Secured can in fact be affected in this way under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture, to the effect that the Beneficiaries will be deemed to be bound by the Indenture Trustee insofar as the Beneficiaries rights against the financing entity are to be affected.

Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

### 2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations.

### 2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

## ARTICLE III
## THE INDENTURE TRUSTEE

### 3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

### 3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

## ARTICLE IV
## APPROVED OBLIGATIONS

### 4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

### 4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;

(b) if the Primary Obligation is a [borrowing][7], at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments[8] under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations,[9] do not exceed the Protection Agreement Maximum;

(c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, not less than ■ Business Days and not more than ■ Business Days prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;

(d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, not less than ■ Business Days and not more than ■ Business Days prior

[7] Under consideration. Need to ensure that non-conventional instruments (capital rather than debt) are caught in the maximum test.

[8] Note: The concept of "repayments" under the OFHPA take account of contemplated refinancings. There is some risk that an anticipated refinancing would not manifest as contemplated, in which case the amount financed (and subject to the Limited Guarantee) could exceed the Protection Agreement Maximum and result in a balloon payment obligation.

[9] Note: If certain financing entity obligations are guaranteed under a one-off agreement, the interaction between the one-off guaranteed amount and Approved Obligations that are looked at to determine if incurrence of a new Primary Obligation is within the Protection Agreement Maximum will need to be considered.

to the incurrence or any amendment of the Primary Obligation, setting out the following with respect to the Primary Obligation:

i. if the Primary Obligation is a [borrowing], confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and

ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and

(e) the Province has not provided notice to the Indenture Trustee that a Breach Event has occurred and that the Limited Guarantee does not apply to any further Primary Obligations that are incurred.[10]

**4.03 Evidence of Satisfaction**

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

## ARTICLE V
## RIGHTS OF THE PROVINCE

**5.01 Assignment and Subrogation**

Upon paying an amount in respect of an Approved Obligation

(a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or

(b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (a) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved

[10] NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.

Obligation applicable in respect of the payment under the Trust Indenture, (b) the benefits of the related Collateral and (c) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

**5.02 Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

**5.03 Voting Rights under "Outstanding Notes"**

Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[11]:

(a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and

(b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

[11] Note: This concept should be reflected in the Trust Indenture to be effective. Additional scenarios where the Province's rights as an affiliate of OPG may differ from what is expected are to be identified in the underlying Program Agreements.

**5.04 Province May Perform Other Program Agreement Covenants.**

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity [and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.[12]

## ARTICLE VIL
## NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

**6.01 Delivery of Assumption Notice**

The Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that, in accordance with the terms of the Process Agreement, the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

**6.02 Cooperation to Implement the Assignment and Assumption**

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use [commercially reasonable efforts] to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[13]

**6.03 Effect of Assumption**

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

**6.04 Interim Period**

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

[12] Note: General Regulation must be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

[13] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

## ARTICLE VII
## INDENTURE TRUSTEE MATTERS

### 7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

### 7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

### 7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

### 7.04 Release of all Collateral

(a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a

subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

(b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

**7.05 Right to Notice and Attend Meetings**

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

## ARTICLE VIII
## SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

**8.01 Suspension Notice**

A written notice in the form of Exhibit C (a "**Suspension Notice**"):

(a) shall be provided by the FSM to the Province and the Indenture Trustee promptly following the occurrence of a Program Breach; and

(b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event.

**8.02 Suspension**

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

**8.03 Termination Notice**

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").

**8.04 No Impact on Adherence**

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

## ARTICLE IX
## MISCELLANEOUS

### 9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

### 9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

[Financing Entity]
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for
[Financing Entity]
[Address]
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

**9.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

**9.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**9.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**9.06 Confidentiality**

[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. Note that this Agreement will become part of the package of rights acquired by investors and counterparties and so it is unclear to what extent confidentiality can or should be preserved in these circumstances.]

**9.07 No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

**9.08 Force Majeure**

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**9.09 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

**SCHEDULE A**
**DEFINED TERMS**

"**Acceleration**" has the meaning ascribed to the term "acceleration"[14] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, or any certification made by OPG under the Process Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

"**Business Day**" means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are [, or the office of the Indenture Trustee is,] authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

[14] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Collection Account**" has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation [as of the date of this Agreement].

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act [as of the date of this Agreement].

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act [as of the date of this Agreement].

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "Investment Interest" in the Act [as of the date of this Agreement].

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.18(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and [(b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.][15]

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

[15] Note: Possible simplification of definition structure under consideration.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

"**Program Breach**" means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Agreement Maximum"** means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.[16]

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) there is a change in the organization or structure of the IESO or Ontario's electricity market[17] undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction [in a final and non-appealable judgement][18] determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and

[16] Note: An alternative would be to expressly state the Program Agreement Maximum amount and the process by which this amount is determined in this Agreement.

[17] Note: Consider more clarity to "Ontario's electricity market".

[18] Under consideration to assess the marketability implications of this phrase.

adversely affects the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.18(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

**EXHIBIT A**
**FORM OF PAYMENT DEMAND**

**EXHIBIT B**
**ASSUMPTION NOTICE**

**EXHIBIT C**
**SUSPENSION NOTICE**

**EXHIBIT D**
**TERMINATION NOTICE**

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Speaking Points for Minister Sousa |
| **Date:** | Monday, October 16, 2017 11:42:41 AM |

---

Thanks Ron. I've asked Scott's EA to share their speaking points with us.

**From:** Ronald Kwan
**Sent:** Monday, October 16, 2017 11:32 AM
**To:** Anna Strathy
**Cc:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Subject:** RE: Speaking Points for Minister Sousa

Hi Anna,

I assume Scott N. will circulate his draft. And OB and TBS may already have messaging on that already, as do we from the time of Budget 2017, so it's good to align, or update as required.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 11:23 AM
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Subject:** Speaking Points for Minister Sousa

Good morning,

The DMO has asked that we prepare speaking points for Minister Sousa to use in response to the AG's report (to be released tomorrow at 10:30am).

I've put together the attached, based on Q&As and speaking points that we prepared previously.

Note, Scott Nelms' group is going to be preparing points on why the OFHP isn't reflected in the fiscal plan/deficit.

Could I ask for your review and comment asap?

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Speaking Points for Minister Sousa |
| **Date:** | Monday, October 16, 2017 11:31:31 AM |

Hi Anna,

I assume Scott N. will circulate his draft. And OB and TBS may already have messaging on that already, as do we from the time of Budget 2017, so it's good to align, or update as required.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 11:23 AM
**To:** Ronald Kwan ; Ken Kandeepan ; Mike Manning
**Cc:** Gadi Mayman
**Subject:** Speaking Points for Minister Sousa

Good morning,

The DMO has asked that we prepare speaking points for Minister Sousa to use in response to the AG's report (to be released tomorrow at 10:30am).

I've put together the attached, based on Q&As and speaking points that we prepared previously.

Note, Scott Nelms' group is going to be preparing points on why the OFHP isn't reflected in the fiscal plan/deficit.

Could I ask for your review and comment asap?

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Speaking Points for Minister Sousa |
| **Date:** | Monday, October 16, 2017 12:07:37 PM |
| **Attachments:** | MINISTER SOUSA SPEAKING POINTS_Markup.docx |

Hi Anna,

A few suggested tweaks.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 11:43 AM
**To:** Ronald Kwan
**Cc:** Gadi Mayman ; Mike Manning ; Ken Kandeepan
**Subject:** RE: Speaking Points for Minister Sousa

Thanks Ron. I've asked Scott's EA to share their speaking points with us.

**From:** Ronald Kwan
**Sent:** Monday, October 16, 2017 11:32 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: Speaking Points for Minister Sousa

Hi Anna,

I assume Scott N. will circulate his draft. And OB and TBS may already have messaging on that already, as do we from the time of Budget 2017, so it's good to align, or update as required.

Ron

**From:** Anna Strathy
**Sent:** October-16-17 11:23 AM
**To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Subject:** Speaking Points for Minister Sousa

Good morning,

The DMO has asked that we prepare speaking points for Minister Sousa to use in response to the AG's report (to be released tomorrow at 10:30am).

I've put together the attached, based on Q&As and speaking points that we prepared previously.

Note, Scott Nelms' group is going to be preparing points on why the OFHP isn't reflected in the fiscal plan/deficit.

Could I ask for your review and comment asap?

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**MINISTER SOUSA SPEAKING POINTS**
**AUDITOR GENERAL'S SPECIAL REPORT ON THE ONTARIO FAIR HYDRO PLAN**

*(GBED to provide language on fiscal plan)*

- The policy objective of OFHP is to more fairly allocate the cost to specified ratepayers over the useful life, not the contractual term, of the electricity generating assets.

- Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base.

- Having the rate-base ~~pay~~carry the cost internally of financing investments is not a new policy, for example Hydro One has borrowed in the capital markets since ~~the early~~May 2000~~s~~.

- We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected in different interest costs.

- The $4 billion figure in the Office of the Auditor General's report was sourced from the ~~FAO's~~ May 2017 report of the Financial Accountability Officer ("FAO"), and it is important to note~~,~~ that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates and cumulative interest costs for the thirty year program were substantially higher than current projections.

- OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

**From:** John Kim
**To:** Mike Manning
**Subject:** RE: Subordinated Debt
**Date:** Wednesday, November 15, 2017 9:47:05 AM

---

Sure, I will attend.
Thanks,
John

---

**From:** Mike Manning
**Sent:** Wednesday, November 15, 2017 9:40 AM
**To:** John Kim
**Subject:** Subordinated Debt

Hi John:
We are having a meeting at 11:30 this morning on the subordinated debt for Fair Hydro in the Capital Markets Boardroom I believe. Would be great if you could attend . Other attendees Jim, Carlos & Ken k.
Regards, Mike

| | |
|---|---|
| **From:** | Reiss, Anthony (MOF) |
| **To:** | Anna Strathy |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement questions |
| **Date:** | Thursday, September 14, 2017 3:46:49 PM |

Ok thanks!

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 14, 2017 3:26 PM
**To:** Reiss, Anthony (MOF)
**Cc:** Kandeepan, Ken (OFA) ; Manning, Mike (OFA)
**Subject:** Re: TB Submission for Change of Law Protection Agreement questions
I'm sorry, Anthony. You're right! I learned something new today. Just checked public accounts and didn't realize that we carried IOD for the Province under "Treasury".
I understand that's where the IOD for FHP would reside, not in a new, separate line.
Anna

Sent from my iPhone

On Sep 14, 2017, at 3:08 PM, Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca> wrote:

> Thanks Anna,
> The IOD is reported per Public Accounts – Volume 1, IOD is reported by Treasury Program (OFA) and consolidated under MOF. Will the IOD under the Fair Hydro Plan have a separate category ? Or will it follow under the current ?
> Anthony
>
> **From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
> **Sent:** September 14, 2017 3:03 PM
> **To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
> **Cc:** Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anthony,
> My responses below in red. By copy I'm asking Ken and Mike to confirm or amend.
> Thanks, Anna
>
> **From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
> **Sent:** Wednesday, September 13, 2017 3:31 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anna,
> Sorry, another question that came up was would the IOD be the same category on what is currently being used ?
>
> - I'm not sure what you mean here. Should one of the triggering events occur, and the Province step in to make payments on behalf of the Financing Entity, the interest payments on the debt assumed by the Province would be added to the Province's interest on debt (IOD). IOD is not held in a specific Ministry, but

rather for the Province as a whole.

What jurisdictions would the Change of Law Protection Agreement be used.

- The Province of Ontario enters into the agreement with the Financing Entity to provide protection to investors. Provincial Law governs the agreement. Investors are expected to be within the Canadian market.

THANKS!

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 3:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions

Thanks so much, Anthony. The house successfully closed! Phew! Happy to have that done.

I'll ask OPCD for feedback. Any word on the timing of the DM briefing so that I can let OPCD know our timelines?

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:15 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** TB Submission for Change of Law Protection Agreement questions

Hi Anna,

I just finished my CAO briefing.

We would like OPCD feedback before our DM briefing and confirmation where would the liability be held in the event the Province takes on the debt ? Which Ministry/Entity would it reside in ?

Let me know what is feasible.

I hope your house closes smoothly!!!!

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 1:47 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We'll likely have it tomorrow morning. Minister is signing sometime this evening.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 1:27 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Would you be able to send me a full sign-off package from MOE later today ?

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 1:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Looks good, Anthony. Nothing from me.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 1:16 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi there,

Please find the attached TB20 Application. Please review and confirm any changes so I can update over here as well.

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:49 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony, sorry about the confusion on the minute. The lawyers are fussing. We are going to keep it as is – no change.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:42 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Legal has just updated the minuting again.

Anna, with these further updates provided how did you want to proceed ?

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 12:28 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Great, ENERGY DMO / MO are comfortable with the submission so whenever you have the signature page, I can arrange to have that provided for their Minister's signature.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 12:15 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I'm working on the TB application now.
I will use what's in the TB submission.
Will need a review before I send it. So it would be early after lunch.
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:07 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We are going with the minuting in the TB Submission, v8, not the revised wording that Toby suggested this morning.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:06 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I have sent a request up internally to see if that is possible.
Anna, since the TB20 application includes the minutes, what minuting are we using on the application, since it seems to have been updated again. I'm sure we want all the documents to be consistent.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:57 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony,
ENERGY CSD is not involved in this process and MOF has been leading the

submission. My office will deliver a package for Minister of Energy signature. What I'm asking for is the TB20 form the Minister signs. Can you please provide?
Thanks,
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:55 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
The Minister of Energy should be signing the same documents as our Ministry, including the TB20 application. MOE controllership should prepare the complete package for sign-off, including the TB20 application.
Would we have a complete signed package by end of day today from Energy ?
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:49 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi Anthony,
I defer to you on what specific documents the Minister has to sign, however, from past experience, we would typically require Minister signature on the TB20.
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:45 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi there,
Please advise what documents the Minister of Energy is signing ?
As it is a joint submission he should be signing a number of documents including a TB20 Application.
I have a CAO information briefing at 2:30 and will want to know about MOE approvals and documentation.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:36 AM

**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Cc:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Revised slide deck - TB Submission for Change of Law Protection Agreement

Thanks for updating this. Do you know when the signing package will be available? The ENERGY Minister is only available until end of day so would like to get that over to ENERGY DMO. Thanks.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 9:16 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Revised slide deck - TB Submission for Change of Law Protection Agreement

A revised slide deck is attached. This version reflects the changes in the latest draft of the TB submission circulated last night (v8), with one exception: Malle, I have not changed the wording of the triggering events in the slide deck to match the more technical wording contained in the submission. I wanted to keep the deck plain-language.

---

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:04 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,

Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).

Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?

Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.

Anthony, I'll resend a scan with Legal sign-off once we have it.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

**Anna Strathy**
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Reiss, Anthony (MOF) |
| **To:** | Anna Strathy |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement questions |
| **Date:** | Thursday, September 14, 2017 3:08:09 PM |
| **Attachments:** | Critical Path - Provincial Support Agreement to OPG Financing EntityV2.docx |

Thanks Anna,
The IOD is reported per Public Accounts – Volume 1, IOD is reported by Treasury Program (OFA) and consolidated under MOF. Will the IOD under the Fair Hydro Plan have a separate category ? Or will it follow under the current ?
Anthony

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 14, 2017 3:03 PM
**To:** Reiss, Anthony (MOF)
**Cc:** Kandeepan, Ken (OFA) ; Manning, Mike (OFA)
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions
Hi Anthony,
My responses below in red. By copy I'm asking Ken and Mike to confirm or amend.
Thanks, Anna

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:31 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions
Hi Anna,
Sorry, another question that came up was would the IOD be the same category on what is currently being used ?

- I'm not sure what you mean here. Should one of the triggering events occur, and the Province step in to make payments on behalf of the Financing Entity, the interest payments on the debt assumed by the Province would be added to the Province's interest on debt (IOD). IOD is not held in a specific Ministry, but rather for the Province as a whole.

What jurisdictions would the Change of Law Protection Agreement be used.

- The Province of Ontario enters into the agreement with the Financing Entity to provide protection to investors. Provincial Law governs the agreement. Investors are expected to be within the Canadian market.

THANKS!
Anthony

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 3:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions
Thanks so much, Anthony. The house successfully closed! Phew! Happy to have that done.
I'll ask OPCD for feedback. Any word on the timing of the DM briefing so that I can let OPCD know our timelines?

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]

**Sent:** Wednesday, September 13, 2017 3:15 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** TB Submission for Change of Law Protection Agreement questions

Hi Anna,

I just finished my CAO briefing.

We would like OPCD feedback before our DM briefing and confirmation where would the liability be held in the event the Province takes on the debt ? Which Ministry/Entity would it reside in ?

Let me know what is feasible.

I hope your house closes smoothly!!!!

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 1:47 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We'll likely have it tomorrow morning. Minister is signing sometime this evening.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 1:27 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Would you be able to send me a full sign-off package from MOE later today ?

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 1:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Looks good, Anthony. Nothing from me.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 1:16 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi there,

Please find the attached TB20 Application. Please review and confirm any changes so I can update over here as well.

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:49 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony, sorry about the confusion on the minute. The lawyers are fussing. We are going to keep it as is – no change.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:42 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
Legal has just updated the minuting again.
Anna, with these further updates provided how did you want to proceed ?
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 12:28 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Great, ENERGY DMO / MO are comfortable with the submission so whenever you have the signature page, I can arrange to have that provided for their Minister's signature.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 12:15 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I'm working on the TB application now.
I will use what's in the TB submission.
Will need a review before I send it. So it would be early after lunch.
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:07 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of

Law Protection Agreement

We are going with the minuting in the TB Submission, v8, not the revised wording that Toby suggested this morning.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:06 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

I have sent a request up internally to see if that is possible.

Anna, since the TB20 application includes the minutes, what minuting are we using on the application, since it seems to have been updated again. I'm sure we want all the documents to be consistent.

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:57 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony,

ENERGY CSD is not involved in this process and MOF has been leading the submission. My office will deliver a package for Minister of Energy signature. What I'm asking for is the TB20 form the Minister signs. Can you please provide?

Thanks,

Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:55 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

The Minister of Energy should be signing the same documents as our Ministry, including the TB20 application. MOE controllership should prepare the complete package for sign-off, including the TB20 application.

Would we have a complete signed package by end of day today from Energy ?

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:49 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>

**Subject:** RE: IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi Anthony,

I defer to you on what specific documents the Minister has to sign, however, from past experience, we would typically require Minister signature on the TB20.

Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:45 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi there,

Please advise what documents the Minister of Energy is signing ?

As it is a joint submission he should be signing a number of documents including a TB20 Application.

I have a CAO information briefing at 2:30 and will want to know about MOE approvals and documentation.

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:36 AM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Cc:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Revised slide deck - TB Submission for Change of Law Protection Agreement

Thanks for updating this. Do you know when the signing package will be available? The ENERGY Minister is only available until end of day so would like to get that over to ENERGY DMO. Thanks.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 9:16 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Revised slide deck - TB Submission for Change of Law Protection Agreement

A revised slide deck is attached. This version reflects the changes in the latest draft of the TB submission circulated last night (v8), with one exception: Malle, I have not changed the wording of the triggering events in the slide deck to match the more technical wording contained in the submission. I wanted to keep the deck plain-language.

---

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:04 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,

Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).

Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?

Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.

Anthony, I'll resend a scan with Legal sign-off once we have it.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

**Anna Strathy**
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

# Ministry of Finance
# Central Agency Submissions Critical Path

Submission Title: Provincial Support Agreement to OPG Financing Entity

Central Agency: TB/MBC ☒ SCLC/ITPAC ☐ Chair's Delegated Item ☐

Meeting Date: September 26, 2017

Submission due to Central Agency: September 5, 2017

| Step | Date |
|---|---|
| Initial draft submitted to CPFB | August 18th |
| Program Head & Legal Approval | September 6th |
| Director of Finance approval required by | September 8th |
| CAO approval required by | September 11th |
| Deputy Minister approval required by | September 12st |
| Minister approval required by | September 14th |

DM and Minster Briefing Attendees (to be finalized):

- Gadi Mayman
- Ronald Kwan
- Ken Kandeepan
- Nancy Kennedy
- Cindy Veinot
- Scott Nelms
- Malle Hanslep
- Mike Manning

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Anthony Reiss (MGS) |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement questions |
| **Date:** | Thursday, September 14, 2017 3:03:08 PM |

Hi Anthony,
My responses below in red. By copy I'm asking Ken and Mike to confirm or amend.
Thanks, Anna

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:31 PM
**To:** Anna Strathy
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions

Hi Anna,
Sorry, another question that came up was would the IOD be the same category on what is currently being used ?

- I'm not sure what you mean here. Should one of the triggering events occur, and the Province step in to make payments on behalf of the Financing Entity, the interest payments on the debt assumed by the Province would be added to the Province's interest on debt (IOD). IOD is not held in a specific Ministry, but rather for the Province as a whole.

What jurisdictions would the Change of Law Protection Agreement be used.

- The Province of Ontario enters into the agreement with the Financing Entity to provide protection to investors. Provincial Law governs the agreement. Investors are expected to be within the Canadian market.

THANKS!
Anthony

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 3:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions

Thanks so much, Anthony. The house successfully closed! Phew! Happy to have that done.
I'll ask OPCD for feedback. Any word on the timing of the DM briefing so that I can let OPCD know our timelines?

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:15 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** TB Submission for Change of Law Protection Agreement questions

Hi Anna,
I just finished my CAO briefing.
We would like OPCD feedback before our DM briefing and confirmation where would the liability be held in the event the Province takes on the debt ? Which Ministry/Entity would it reside in ?
Let me know what is feasible.
I hope your house closes smoothly!!!!
Thanks,
Anthony

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 1:47 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We'll likely have it tomorrow morning. Minister is signing sometime this evening.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 1:27 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
Would you be able to send me a full sign-off package from MOE later today ?
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 1:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Looks good, Anthony. Nothing from me.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 1:16 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi there,
Please find the attached TB20 Application. Please review and confirm any changes so I can update over here as well.
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:49 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony, sorry about the confusion on the minute. The lawyers are fussing. We are going to keep it as is – no change.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:42 PM

**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Legal has just updated the minuting again.

Anna, with these further updates provided how did you want to proceed ?

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 12:28 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Great, ENERGY DMO / MO are comfortable with the submission so whenever you have the signature page, I can arrange to have that provided for their Minister's signature.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 12:15 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

I'm working on the TB application now.

I will use what's in the TB submission.

Will need a review before I send it. So it would be early after lunch.

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:07 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We are going with the minuting in the TB Submission, v8, not the revised wording that Toby suggested this morning.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:06 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

I have sent a request up internally to see if that is possible.

Anna, since the TB20 application includes the minutes, what minuting are we using on the application, since it seems to have been updated again. I'm sure we want all the documents to be consistent.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:57 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony,
ENERGY CSD is not involved in this process and MOF has been leading the submission. My office will deliver a package for Minister of Energy signature. What I'm asking for is the TB20 form the Minister signs. Can you please provide?
Thanks,
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:55 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
The Minister of Energy should be signing the same documents as our Ministry, including the TB20 application. MOE controllership should prepare the complete package for sign-off, including the TB20 application.
Would we have a complete signed package by end of day today from Energy ?
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:49 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi Anthony,
I defer to you on what specific documents the Minister has to sign, however, from past experience, we would typically require Minister signature on the TB20.
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:45 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi there,
Please advise what documents the Minister of Energy is signing ?
As it is a joint submission he should be signing a number of documents including a TB20 Application.
I have a CAO information briefing at 2:30 and will want to know about MOE approvals and documentation.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:36 AM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Cc:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Revised slide deck - TB Submission for Change of Law Protection Agreement

Thanks for updating this. Do you know when the signing package will be available? The ENERGY Minister is only available until end of day so would like to get that over to ENERGY DMO. Thanks.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 9:16 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Revised slide deck - TB Submission for Change of Law Protection Agreement

A revised slide deck is attached. This version reflects the changes in the latest draft of the TB submission circulated last night (v8), with one exception: Malle, I have not changed the wording of the triggering events in the slide deck to match the more technical wording contained in the submission. I wanted to keep the deck plain-language.

---

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:04 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,
Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).
Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.
Anthony, I'll resend a scan with Legal sign-off once we have it.
Please don't hesitate to contact me should you have any questions.
Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Reiss, Anthony (MOF) |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Malle Hanslep (MOF); Keley Katona (ENERGY); Hilary Cox (ENE); Mike Manning; Ronald Kwan; Ken Kandeepan; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement |
| **Date:** | Tuesday, September 12, 2017 8:43:22 PM |

---

Hi Anna,

The TBS analyst will be James Strang.

We can touch base in the morning. I should be in early (7ish).

Thanks,
Anthony

_____

From: Anna Strathy [Anna.Strathy@ofina.on.ca]
Sent: September 12, 2017 7:08 PM
To: Reiss, Anthony (MOF); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Hanslep, Malle (MOF); Katona, Keley (MOF); Cox, Hilary (ENERGY); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY)
Subject: RE: TB Submission for Change of Law Protection Agreement

Thanks Anthony, I will update the slide deck (although I'm not sure the submission will be stable until it's signed off by the Ministers!)

Who is the TBS analyst on this?

From: Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
Sent: Tuesday, September 12, 2017 3:35 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: TB Submission for Change of Law Protection Agreement

Thanks Toby!

Hi Anna,

Based on the changes I would require an updated slide deck. We have another TBS analyst who would be taking this forward so would like to give him a copy of the submission once everyone is comfortable that the submission is stable. Still need to make sure that we are consistent with the request to TB/MBC and the minuting at the end.

Thanks,
Anthony

From: Whitfield, Tobias P. (MOF)
Sent: September 12, 2017 2:45 PM
To: Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca<mailto:Anthony.Reiss@ontario.ca>>; Katona, Keley (MOF)

<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; Cox, Hilary (ENERGY)
<Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Manning, Mike (OFA)
<Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA)
<Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (ENERGY)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>
Subject: TB Submission for Change of Law Protection Agreement

Please find attached a markup of the TB submission, as well as a revised term sheet and OIC.

The term sheet is as we have discussed further with Blakes, and as revised by them to reflect our discussions. The document has been renamed to a “protection agreement” because the authority and the obligation is not necessarily an assumption of the obligations of a Financing Entity, and is rather the payment of such obligations. I have attached both the clean and blacklined versions.

The OIC draft is an update of the latest version that was circulated, with the notes to draft removed as there were no further comments.

We have marked up the TB submission to reflect the current status of the negotiation of the term sheet and subject to necessary approvals. We have deleted the attached term sheet from the markup so that the revised version can be inserted instead. We also think it makes sense to include the draft OIC in the TB materials.

Please let me know if you have any comments or questions.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Anthony Reiss (MGS); Tobias P. Whitfield (MOF); Gadi Mayman; Malle Hanslep (MOF); Keley Katona (ENERGY); Hilary Cox (ENE); Mike Manning; Ronald Kwan; Ken Kandeepan; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement |
| **Date:** | Tuesday, September 12, 2017 7:08:52 PM |

Thanks Anthony, I will update the slide deck (although I'm not sure the submission will be stable until it's signed off by the Ministers!)
Who is the TBS analyst on this?

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Tuesday, September 12, 2017 3:35 PM
**To:** Tobias P. Whitfield (MOF) ; Gadi Mayman ; Malle Hanslep (MOF) ; Anna Strathy ; Keley Katona (ENERGY) ; Hilary Cox (ENE) ; Mike Manning ; Ronald Kwan ; Ken Kandeepan ; Thouin, Alena (ENERGY) ; Tom McKinlay (MAG)
**Subject:** RE: TB Submission for Change of Law Protection Agreement
Thanks Toby!
Hi Anna,
Based on the changes I would require an updated slide deck. We have another TBS analyst who would be taking this forward so would like to give him a copy of the submission once everyone is comfortable that the submission is stable. Still need to make sure that we are consistent with the request to TB/MBC and the minuting at the end.
Thanks,
Anthony

**From:** Whitfield, Tobias P. (MOF)
**Sent:** September 12, 2017 2:45 PM
**To:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay@ontario.ca>
**Subject:** TB Submission for Change of Law Protection Agreement
Please find attached a markup of the TB submission, as well as a revised term sheet and OIC.
The term sheet is as we have discussed further with Blakes, and as revised by them to reflect our discussions. The document has been renamed to a "protection agreement" because the authority and the obligation is not necessarily an assumption of the obligations of a Financing Entity, and is rather the payment of such obligations. I have attached both the clean and blacklined versions.
The OIC draft is an update of the latest version that was circulated, with the notes to draft removed as there were no further comments.
We have marked up the TB submission to reflect the current status of the negotiation of the term sheet and subject to necessary approvals. We have deleted the attached term sheet from the markup so that the revised version can be inserted instead. We also think it makes sense to include the draft OIC in the TB materials.
Please let me know if you have any comments or questions.
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

| | |
|---|---|
| **From:** | Reiss, Anthony (MOF) |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Malle Hanslep (MOF); Anna Strathy; Keley Katona (ENERGY); Hilary Cox (ENE); Mike Manning; Ronald Kwan; Ken Kandeepan; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | RE: TB Submission for Change of Law Protection Agreement |
| **Date:** | Tuesday, September 12, 2017 3:34:39 PM |

Thanks Toby!

Hi Anna,

Based on the changes I would require an updated slide deck. We have another TBS analyst who would be taking this forward so would like to give him a copy of the submission once everyone is comfortable that the submission is stable. Still need to make sure that we are consistent with the request to TB/MBC and the minuting at the end.

Thanks,

Anthony

**From:** Whitfield, Tobias P. (MOF)

**Sent:** September 12, 2017 2:45 PM

**To:** Mayman, Gadi (OFA) ; Hanslep, Malle (MOF) ; Strathy, Anna (OFA) ; Reiss, Anthony (MOF) ; Katona, Keley (MOF) ; Cox, Hilary (ENERGY) ; Manning, Mike (OFA) ; Kwan, Ronald (OFA) ; Kandeepan, Ken (OFA) ; Thouin, Alena (ENERGY) ; McKinlay, Tom (ENERGY)

**Subject:** TB Submission for Change of Law Protection Agreement

Please find attached a markup of the TB submission, as well as a revised term sheet and OIC.

The term sheet is as we have discussed further with Blakes, and as revised by them to reflect our discussions. The document has been renamed to a “protection agreement” because the authority and the obligation is not necessarily an assumption of the obligations of a Financing Entity, and is rather the payment of such obligations. I have attached both the clean and blacklined versions.

The OIC draft is an update of the latest version that was circulated, with the notes to draft removed as there were no further comments.

We have marked up the TB submission to reflect the current status of the negotiation of the term sheet and subject to necessary approvals. We have deleted the attached term sheet from the markup so that the revised version can be inserted instead. We also think it makes sense to include the draft OIC in the TB materials.

Please let me know if you have any comments or questions.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ken Kandeepan
**To:** Anna Strathy; Anthony Reiss (MGS)
**Cc:** Mike Manning
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions
**Date:** Saturday, September 16, 2017 12:58:44 PM

---

Correct, just as an FYI, all of the Province's IOD including the IOD incurred by the BPS that is line by line consolidated is now presented in the IOD under the Treasury program.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Thursday, September 14, 2017 3:26 PM
**To:** Anthony Reiss (MGS)
**Cc:** Ken Kandeepan ; Mike Manning
**Subject:** Re: TB Submission for Change of Law Protection Agreement questions
I'm sorry, Anthony. You're right! I learned something new today. Just checked public accounts and didn't realize that we carried IOD for the Province under "Treasury".
I understand that's where the IOD for FHP would reside, not in a new, separate line.
Anna

Sent from my iPhone

On Sep 14, 2017, at 3:08 PM, Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca> wrote:

> Thanks Anna,
> The IOD is reported per Public Accounts – Volume 1, IOD is reported by Treasury Program (OFA) and consolidated under MOF. Will the IOD under the Fair Hydro Plan have a separate category ? Or will it follow under the current ?
> Anthony
>
> ---
>
> **From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
> **Sent:** September 14, 2017 3:03 PM
> **To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
> **Cc:** Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anthony,
> My responses below in red. By copy I'm asking Ken and Mike to confirm or amend.
> Thanks, Anna
>
> ---
>
> **From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
> **Sent:** Wednesday, September 13, 2017 3:31 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anna,
> Sorry, another question that came up was would the IOD be the same category on what is currently being used ?
>
> - I'm not sure what you mean here. Should one of the triggering events occur, and

the Province step in to make payments on behalf of the Financing Entity, the interest payments on the debt assumed by the Province would be added to the Province's interest on debt (IOD). IOD is not held in a specific Ministry, but rather for the Province as a whole.

What jurisdictions would the Change of Law Protection Agreement be used.

- The Province of Ontario enters into the agreement with the Financing Entity to provide protection to investors. Provincial Law governs the agreement. Investors are expected to be within the Canadian market.

THANKS!
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 3:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions

Thanks so much, Anthony. The house successfully closed! Phew! Happy to have that done.
I'll ask OPCD for feedback. Any word on the timing of the DM briefing so that I can let OPCD know our timelines?

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:15 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** TB Submission for Change of Law Protection Agreement questions

Hi Anna,
I just finished my CAO briefing.
We would like OPCD feedback before our DM briefing and confirmation where would the liability be held in the event the Province takes on the debt ? Which Ministry/Entity would it reside in ?
Let me know what is feasible.
I hope your house closes smoothly!!!!
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 1:47 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We'll likely have it tomorrow morning. Minister is signing sometime this evening.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 1:27 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for

Change of Law Protection Agreement

Hi Keley,

Would you be able to send me a full sign-off package from MOE later today ?

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 1:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Looks good, Anthony. Nothing from me.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 1:16 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi there,

Please find the attached TB20 Application. Please review and confirm any changes so I can update over here as well.

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:49 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony, sorry about the confusion on the minute. The lawyers are fussing. We are going to keep it as is – no change.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:42 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Legal has just updated the minuting again.

Anna, with these further updates provided how did you want to proceed ?

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 12:28 PM

**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Great, ENERGY DMO / MO are comfortable with the submission so whenever you have the signature page, I can arrange to have that provided for their Minister's signature.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 12:15 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I'm working on the TB application now.
I will use what's in the TB submission.
Will need a review before I send it. So it would be early after lunch.
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:07 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We are going with the minuting in the TB Submission, v8, not the revised wording that Toby suggested this morning.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:06 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I have sent a request up internally to see if that is possible.
Anna, since the TB20 application includes the minutes, what minuting are we using on the application, since it seems to have been updated again. I'm sure we want all the documents to be consistent.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:57 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>

**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony,
ENERGY CSD is not involved in this process and MOF has been leading the submission. My office will deliver a package for Minister of Energy signature. What I'm asking for is the TB20 form the Minister signs. Can you please provide?
Thanks,
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:55 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
The Minister of Energy should be signing the same documents as our Ministry, including the TB20 application. MOE controllership should prepare the complete package for sign-off, including the TB20 application.
Would we have a complete signed package by end of day today from Energy ?
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:49 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi Anthony,
I defer to you on what specific documents the Minister has to sign, however, from past experience, we would typically require Minister signature on the TB20.
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:45 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi there,
Please advise what documents the Minister of Energy is signing ?
As it is a joint submission he should be signing a number of documents including a TB20 Application.
I have a CAO information briefing at 2:30 and will want to know about MOE approvals and documentation.

Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:36 AM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Cc:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Revised slide deck - TB Submission for Change of Law Protection Agreement

Thanks for updating this. Do you know when the signing package will be available? The ENERGY Minister is only available until end of day so would like to get that over to ENERGY DMO. Thanks.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 9:16 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Revised slide deck - TB Submission for Change of Law Protection Agreement

A revised slide deck is attached. This version reflects the changes in the latest draft of the TB submission circulated last night (v8), with one exception: Malle, I have not changed the wording of the triggering events in the slide deck to match the more technical wording contained in the submission. I wanted to keep the deck plain-language.

---

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:04 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,

Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).

Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?

Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.

Anthony, I'll resend a scan with Legal sign-off once we have it.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO

Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Ken Kandeepan; Malle Hanslep (MOF) |
| **Cc:** | Anna Strathy; Gadi Mayman; Mike Manning; Ronald Kwan; Anthony Reiss (MGS) |
| **Subject:** | RE: Term Sheet |
| **Date:** | Wednesday, September 13, 2017 12:39:00 PM |
| **Attachments:** | 23148306-v15-Term Sheet - Provincial Support Agreement - Sept. 13.docx |

Following further discussions, we have further revised the wording for the TB minute suggestion as below. Also, I have attached a revised term sheet that includes a note regarding changes to the IESO structure, reflecting the additional negotiating point in that respect. The intention is not to provide that note to OPG, but to include it so that if the negotiations lead to that point being included that the approval includes a reference to it in the approved form of term sheet.

"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such non-material changes and amendments to those terms and that the two ministers acting together may determine."

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** September 13, 2017 11:20 AM
**To:** Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Reiss, Anthony (MOF)
**Subject:** RE: Term Sheet

Is it possible for Malle and you to call me 416-325-9814
Ken k

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, September 13, 2017 11:18 AM
**To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Term Sheet

Malle and I have discussed the wording and we think that the below wording more clearly sets out the scope of the Ministers' authority to enter into the agreement, but also to negotiate the terms in a way that is consistent with the attached term sheet, but also allowing some scope for amendments.

This is our proposed wording for the first minute, with substantive changes in red:

"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and

subject to such non-material changes and amendments to those terms and that the two ministers acting together may determine."

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 13, 2017 10:40 AM
**To:** Kandeepan, Ken (OFA)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** Re: Term Sheet

Thanks Ken. I am wondering whether we should expand the wording of the requested minute #1 a bit to make it clearer that the Ministers can negotiate a bit more because right now it refers to the appended term sheet which doesn't include the third scenario although it is in the body of the text. Maybe strenthen that wording a bit.

OPG has not seen the changes that we made to the term sheet yesterday to align it to the OIC authority. Eg changing the name etc

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 13, 2017 10:33
**To:** Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** RE: Term Sheet

Hi Malle

After discussing with Gadi, Mike and Ron, we understand that OPG's current timeframe for meeting with the Rating Agencies is next week. Unless OPG comes back with material revisions to the Term Sheet as it currently stands, which hopefully is unlikely, the submission can proceed as planned, given that the requested approval is to negotiate the terms. Note that even the initial request by OPG for the Assumption to cover any changes to the IESO organization, structure or operations which we removed in the last version of the Term Sheet is included in the submission as a contingent.

Any non-material changes over the next few days can be incorporated into the TBS Note which is usually the primary document used in the presentation to Treasury Board. As Gadi pointed out any material changes that may surface as the terms of the Assumption are finalized may require another visit to TB.

Thanks and hope this answers your question.

Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Wednesday, September 13, 2017 10:00 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF)

<Tobias.Whitfield@ontario.ca>
**Subject:** Term Sheet
Hi,
We wanted to let you know that we haven't heard anything back from Torys on the term sheet since our call with them last Friday. I think that they were going to speak to the dealers about this. Steve is going to call Torys to find out the status.
Given that it will be very difficult to make changes to the term sheet once it is in the TB process and the Ministers sign off, I wonder what we can do about this. Have you heard anything back from OPG about comments or the timing as they said they needed to go to the rating agencies with this?
Thanks.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims.<br><br>**[Note: Additional term to be considered regarding changes to the organization, structure, or operations of the IESO. See section 4 of Treasury Board submission for additional details.]** |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |

| | |
|---|---|
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br><br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |

| | |
|---|---|
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF) |
| **Cc:** | Anna Strathy; Gadi Mayman; Mike Manning; Ronald Kwan; Anthony Reiss (MGS) |
| **Subject:** | RE: Term Sheet |
| **Date:** | Wednesday, September 13, 2017 11:20:03 AM |

---

Is it possible for Malle and you to call me 416-325-9814
Ken k

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, September 13, 2017 11:18 AM
**To:** Malle Hanslep (MOF) ; Ken Kandeepan
**Cc:** Anna Strathy ; Gadi Mayman ; Mike Manning ; Ronald Kwan ; Anthony Reiss (MGS)
**Subject:** RE: Term Sheet

Malle and I have discussed the wording and we think that the below wording more clearly sets out the scope of the Ministers' authority to enter into the agreement, but also to negotiate the terms in a way that is consistent with the attached term sheet, but also allowing some scope for amendments.

This is our proposed wording for the first minute, with substantive changes in red:

"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities generally reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such changes and amendments to those terms and additional terms and conditions that the two ministers acting together may determine at their discretion."

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 13, 2017 10:40 AM
**To:** Kandeepan, Ken (OFA)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** Re: Term Sheet

Thanks Ken. I am wondering whether we should expand the wording of the requested minute #1 a bit to make it clearer that the Ministers can negotiate a bit more because right now it refers to the appended term sheet which doesn't include the third scenario although it is in the body of the text. Maybe strenthen that wording a bit.

OPG has not seen the changes that we made to the term sheet yesterday to align it to the OIC authority. Eg changing the name etc

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 13, 2017 10:33
**To:** Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** RE: Term Sheet

Hi Malle
After discussing with Gadi, Mike and Ron, we understand that OPG's current timeframe for meeting with the Rating Agencies is next week. Unless OPG comes back with material revisions to the Term Sheet as it currently stands, which hopefully is unlikely, the submission can proceed as planned, given that the requested approval is to negotiate the terms. Note that even the initial request by OPG for the Assumption to cover any changes to the IESO organization, structure or operations which we removed in the last version of the Term Sheet is included in the submission as a contingent.
Any non-material changes over the next few days can be incorporated into the TBS Note which is usually the primary document used in the presentation to Treasury Board. As Gadi pointed out any material changes that may surface as the terms of the Assumption are finalized may require another visit to TB.
Thanks and hope this answers your question.
Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Wednesday, September 13, 2017 10:00 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Term Sheet
Hi,
We wanted to let you know that we haven't heard anything back from Torys on the term sheet since our call with them last Friday. I think that they were going to speak to the dealers about this. Steve is going to call Torys to find out the status.
Given that it will be very difficult to make changes to the term sheet once it is in the TB process and the Ministers sign off, I wonder what we can do about this. Have you heard anything back from OPG about comments or the timing as they said they needed to go to the rating agencies with this?
Thanks.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Whitfield, Tobias P. (MOF)
**To:** Malle Hanslep (MOF); Ken Kandeepan
**Cc:** Anna Strathy; Gadi Mayman; Mike Manning; Ronald Kwan; Anthony Reiss (MGS)
**Subject:** RE: Term Sheet
**Date:** Wednesday, September 13, 2017 11:18:29 AM

---

Malle and I have discussed the wording and we think that the below wording more clearly sets out the scope of the Ministers' authority to enter into the agreement, but also to negotiate the terms in a way that is consistent with the attached term sheet, but also allowing some scope for amendments.

This is our proposed wording for the first minute, with substantive changes in red:

"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities generally reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such changes and amendments to those terms and additional terms and conditions that the two ministers acting together may determine at their discretion."

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 13, 2017 10:40 AM
**To:** Kandeepan, Ken (OFA)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** Re: Term Sheet

Thanks Ken. I am wondering whether we should expand the wording of the requested minute #1 a bit to make it clearer that the Ministers can negotiate a bit more because right now it refers to the appended term sheet which doesn't include the third scenario although it is in the body of the text. Maybe strenthen that wording a bit.

OPG has not seen the changes that we made to the term sheet yesterday to align it to the OIC authority. Eg changing the name etc

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 13, 2017 10:33
**To:** Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** RE: Term Sheet

Hi Malle

After discussing with Gadi, Mike and Ron, we understand that OPG's current timeframe for meeting with the Rating Agencies is next week. Unless OPG comes back with material revisions to the Term Sheet as it currently stands, which hopefully is unlikely, the submission can proceed as planned, given that the requested approval is to negotiate the terms. Note that even the initial request by

OPG for the Assumption to cover any changes to the IESO organization, structure or operations which we removed in the last version of the Term Sheet is included in the submission as a contingent.
Any non-material changes over the next few days can be incorporated into the TBS Note which is usually the primary document used in the presentation to Treasury Board. As Gadi pointed out any material changes that may surface as the terms of the Assumption are finalized may require another visit to TB.
Thanks and hope this answers your question.
Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Wednesday, September 13, 2017 10:00 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Term Sheet
Hi,
We wanted to let you know that we haven't heard anything back from Torys on the term sheet since our call with them last Friday. I think that they were going to speak to the dealers about this. Steve is going to call Torys to find out the status.
Given that it will be very difficult to make changes to the term sheet once it is in the TB process and the Ministers sign off, I wonder what we can do about this. Have you heard anything back from OPG about comments or the timing as they said they needed to go to the rating agencies with this?
Thanks.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Tobias P. Whitfield (MOF); Malle Hanslep (MOF) |
| **Cc:** | Anna Strathy; Gadi Mayman; Mike Manning; Ronald Kwan; Anthony Reiss (MGS) |
| **Subject:** | RE: Term Sheet |
| **Date:** | Wednesday, September 13, 2017 12:52:51 PM |

Hi Toby/Malle
As discussed given that the submission is heading over to for the signature of the Minister of Energy why don't we wait until we receive the draft note from TBS to make these changes. Note that the minute is actually written by TBS, the submitting ministries simply provide a suggested version. As I mentioned to Toby, any revisions at this point may impose too much of a delay.
Once we receive the draft note from TBS we can make these changes provided of course MOE Legal and TBS Analyst are comfortable.
Thanks
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:39 PM
**To:** Ken Kandeepan ; Malle Hanslep (MOF)
**Cc:** Anna Strathy ; Gadi Mayman ; Mike Manning ; Ronald Kwan ; Anthony Reiss (MGS)
**Subject:** RE: Term Sheet
Following further discussions, we have further revised the wording for the TB minute suggestion as below. Also, I have attached a revised term sheet that includes a note regarding changes to the IESO structure, reflecting the additional negotiating point in that respect. The intention is not to provide that note to OPG, but to include it so that if the negotiations lead to that point being included that the approval includes a reference to it in the approved form of term sheet.
"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such non-material changes and amendments to those terms and that the two ministers acting together may determine."
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
**Sent:** September 13, 2017 11:20 AM
**To:** Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Reiss, Anthony (MOF)
**Subject:** RE: Term Sheet
Is it possible for Malle and you to call me 416-325-9814
Ken k

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Wednesday, September 13, 2017 11:18 AM
**To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Term Sheet

Malle and I have discussed the wording and we think that the below wording more clearly sets out the scope of the Ministers' authority to enter into the agreement, but also to negotiate the terms in a way that is consistent with the attached term sheet, but also allowing some scope for amendments.

This is our proposed wording for the first minute, with substantive changes in red:

"Approve the Minister of Finance and Minister of Energy to negotiate a protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such non-material changes and amendments to those terms and that the two ministers acting together may determine."

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 13, 2017 10:40 AM
**To:** Kandeepan, Ken (OFA)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** Re: Term Sheet

Thanks Ken. I am wondering whether we should expand the wording of the requested minute #1 a bit to make it clearer that the Ministers can negotiate a bit more because right now it refers to the appended term sheet which doesn't include the third scenario although it is in the body of the text. Maybe strenthen that wording a bit.

OPG has not seen the changes that we made to the term sheet yesterday to align it to the OIC authority. Eg changing the name etc

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Ken Kandeepan
**Sent:** Wednesday, September 13, 2017 10:33
**To:** Hanslep, Malle (MOF)
**Cc:** Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA)
**Subject:** RE: Term Sheet

Hi Malle

After discussing with Gadi, Mike and Ron, we understand that OPG's current timeframe for meeting with the Rating Agencies is next week. Unless OPG comes back with material revisions to the Term Sheet as it currently stands, which hopefully is unlikely, the submission can proceed as planned, given that the requested approval is to negotiate the terms. Note that even the initial request by OPG for the Assumption to cover any changes to the IESO organization, structure or operations which we removed in the last version of the Term Sheet is included in the submission as a contingent.

Any non-material changes over the next few days can be incorporated into the TBS Note which is usually the primary document used in the presentation to Treasury Board. As Gadi pointed out any material changes that may surface as the terms of the Assumption are finalized may require another visit to TB.
Thanks and hope this answers your question.
Ken k

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Wednesday, September 13, 2017 10:00 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Term Sheet

Hi,
We wanted to let you know that we haven't heard anything back from Torys on the term sheet since our call with them last Friday. I think that they were going to speak to the dealers about this. Steve is going to call Torys to find out the status.
Given that it will be very difficult to make changes to the term sheet once it is in the TB process and the Ministers sign off, I wonder what we can do about this. Have you heard anything back from OPG about comments or the timing as they said they needed to go to the rating agencies with this?
Thanks.
Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; stephen.ashbourne@blakes.com; Tobias P. Whitfield (MOF) |
| **Cc:** | Ken Kandeepan; Anna Strathy; Ronald Kwan |
| **Subject:** | RE: US Dollar Debt |
| **Date:** | Tuesday, November 14, 2017 5:22:25 PM |

Thanks Mike, Perhaps we can build this into the Process Agreement in some way – we could put it as a note if it's not easy to do quickly.

**From:** Mike Manning [mailto:Mike.Manning@ofina.on.ca]
**Sent:** November 14, 2017 3:36 PM
**To:** stephen.ashbourne@blakes.com; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
**Cc:** Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)
**Subject:** US Dollar Debt

Not sure if this helps at this stage, but OPG happy to say protection agreement applies to Canadian dollar issuance only. They appreciate that US dollar issuance would be a different kind of animal.
Regards, Mike

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy |
| **Cc:** | Mike Manning; Gadi Mayman; Ronald Kwan |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 9:22:59 AM |

Thanks, agree with all your comments, much appreciated, with regard to running the page 2 suggested edit by OPCD, easiest will be if you send it to Sarah Hosick, Cindy's EA who usually responds quickly. Hope that is ok.
Ken k

**From:** Anna Strathy
**Sent:** Wednesday, October 04, 2017 9:20 AM
**To:** Ken Kandeepan
**Cc:** Mike Manning ; Gadi Mayman ; Ronald Kwan
**Subject:** RE: Updated Materials
Hi Ken – just a few comments below.

**From:** Ken Kandeepan
**Sent:** Wednesday, October 04, 2017 8:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Updated Materials
Hi Anna
Agree with Ron's and Gadi's comments plus here are a few from me.
Government Response
Page 1: 4th para 2nd sentence the reference to third party experts, since the Navigant report has or will be released to the AG why not include a reference. "third party experts, including a recent report from Navigant that will be provided to the OAG, have confirmed….." At the last DM meeting on this, Deputy Imbrognu mentioned Energy lawyers were concerned that because Blakes commissioned the Navigant report, it could be caught by solicitor-client privilege, and if Energy waives that privilege, it's not clear whether anything else would be waived. The question of releasing it publicly is therefore still an open question.
Page 2: Last para, last sentence now reads as: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate". Suggest revising as follows: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, however, this treatment will not reflect the economic substance of the program since the benefits of the GA refinancing accrues to ratepayers". Hope you don't mind, I've added "however". We may want to run this by OPCD and Energy before submitting to our DMO. Do you want me to connect with Cindy and Steen? Or would you like to?
Consolidated Comments
One small suggested edit to our contribution. The third para first sentence now reads as follows: "The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets)".
Suggest that it be revised to :" The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the

contract lengths, that may be shorter than the expected useful life of the assets).
Note the typo in "life" in the original. Thank you!
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Tuesday, October 03, 2017 9:50 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: Updated Materials
FYI attached, and please let me know if you have any comments as soon as possible.
Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 3, 2017 at 8:57:03 PM EDT
> **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
> **Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> **Subject: Updated Materials**
>
> Hi all,
> I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
> **Next Steps**:
> - In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
> - Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
> - The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.

- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; Gadi Mayman; Ronald Kwan |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 9:19:56 AM |

Hi Ken – just a few comments below.

**From:** Ken Kandeepan
**Sent:** Wednesday, October 04, 2017 8:42 AM
**To:** Anna Strathy ; Gadi Mayman ; Ronald Kwan
**Cc:** Mike Manning
**Subject:** RE: Updated Materials

Hi Anna

Agree with Ron's and Gadi's comments plus here are a few from me.

Government Response

Page 1: 4th para 2nd sentence the reference to third party experts, since the Navigant report has or will be released to the AG why not include a reference. "third party experts, including a recent report from Navigant that will be provided to the OAG, have confirmed….." At the last DM meeting on this, Deputy Imbrognu mentioned Energy lawyers were concerned that because Blakes commissioned the Navigant report, it could be caught by solicitor-client privilege, and if Energy waives that privilege, it's not clear whether anything else would be waived. The question of releasing it publicly is therefore still an open question.

Page 2: Last para, last sentence now reads as: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate". Suggest revising as follows: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, however, this treatment will not reflect the economic substance of the program since the benefits of the GA refinancing accrues to ratepayers". Hope you don't mind, I've added "however". We may want to run this by OPCD and Energy before submitting to our DMO. Do you want me to connect with Cindy and Steen? Or would you like to?

Consolidated Comments

One small suggested edit to our contribution. The third para first sentence now reads as follows: "The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets)".

Suggest that it be revised to :" The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful life of the assets).

Note the typo in "life" in the original. Thank you!

Thanks

Ken k

**From:** Anna Strathy
**Sent:** Tuesday, October 03, 2017 9:50 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: Updated Materials

FYI attached, and please let me know if you have any comments as soon as possible.

Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

**From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
**Date:** October 3, 2017 at 8:57:03 PM EDT
**To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: Updated Materials**

Hi all,
I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.
Dave
**David McLean**
*Executive Assistant*
*and Special Policy Advisor*

Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman |
| **Cc:** | Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 9:10:47 AM |

Hi Gadi, I wanted to respond to your remarks below before sending the consolidated edits. See red text below.

**From:** Gadi Mayman
**Sent:** Tuesday, October 03, 2017 10:57 PM
**To:** Anna Strathy
**Cc:** Ken Kandeepan ; Ronald Kwan ; Mike Manning
**Subject:** Re: Updated Materials

In our paragraph near the end of the government response, the second mention of FAO should have a "the" in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don't have numbers in their title?) The 2.0 refers to the second reference to the $4b on page 10. I've replaced the comma with "and" to be more clear".

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word "way" instead of "was". In the first paragraph, I think it reads more clearly if, in the last sentence, between "as an asset and" and "in accordance with" we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with "in accordance with the accounting definition." Since I'm being unnecessarily fussy, let me even go as far as to suggest if we do that, we could get rid of the second and in the sentence: "... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. "

Done!

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, and please let me know if you have any comments as soon as possible. Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> > **Date:** October 3, 2017 at 8:57:03 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna

Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: Updated Materials**

Hi all,
I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan; Gadi Mayman; Ronald Kwan |
| **Cc:** | Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 8:48:13 AM |
| **Attachments:** | RE Updated Materials.msg |

Thanks everyone. We received a slightly revised government response from the DMO (see attached), which includes edits from Deputy Thompson in his effort to shorten the response as much as possible.
I will make all of our edits to this latest version (as well as the consolidated comments tracker) and then send around for everyone's final review.

**From:** Ken Kandeepan
**Sent:** Wednesday, October 04, 2017 8:42 AM
**To:** Anna Strathy ; Gadi Mayman ; Ronald Kwan
**Cc:** Mike Manning
**Subject:** RE: Updated Materials

Hi Anna
Agree with Ron's and Gadi's comments plus here are a few from me.
Government Response
Page 1: 4th para 2nd sentence the reference to third party experts, since the Navigant report has or will be released to the AG why not include a reference. "third party experts, including a recent report from Navigant that will be provided to the OAG, have confirmed….."
Page 2: Last para, last sentence now reads as: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate". Suggest revising as follows: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, this treatment will not reflect the economic substance of the program since the benefits of the GA refinancing accrues to ratepayers".
Consolidated Comments
One small suggested edit to our contribution. The third para first sentence now reads as follows: "The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets)".
Suggest that it be revised to :" The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful life of the assets).
Note the typo in "life" in the original.
Thanks
Ken k

**From:** Anna Strathy
**Sent:** Tuesday, October 03, 2017 9:50 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: Updated Materials

FYI attached, and please let me know if you have any comments as soon as possible.
Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded

debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

**From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
**Date:** October 3, 2017 at 8:57:03 PM EDT
**To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: Updated Materials**

Hi all,
I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office

Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**From:** David McLean (MOF) []
**To:** Martin Schlaepfer (MOF) [Martin.Schlaepfer@ontario.ca]; Anna Strathy [Anna.Strathy@ofina.on.ca]; Kyle MacIntyre (MOF) [Kyle.MacIntyre@ontario.ca]; Patrick Laughton (MOF) [Patrick.Laughton@ontario.ca]
**CC:** William Bromm (CAB) [William.Bromm2@ontario.ca]
**Subject:** RE: Updated Materials
**Date:** Wednesday, October 04, 2017 08:33:06
**Attachment 1:** Government Response to AG FHP Report - MOF edits - Oct 4 820AM TRACKED.docx
**Attachment 2:** Government Response to AG FHP Report - MOF edits - Oct 4 820AM CLEAN.docx

---

Good morning,

In an effort to keep the word and page count down, we have made a few edits to the report. My DM would like to try to limit the length as much as possible.

Please ask staff to make any final edits to the attached clean version.

Patrick – there's a question in the tracked version. It's about a sentence that I believe OPCD added it. The boss is looking for where in the report the AG makes that assertion.

Thanks,
Dave

**From:** McLean, David (MOF)
**Sent:** October 3, 2017 8:57 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); MacIntyre, Kyle (TBS); Laughton, Patrick (TBS)
**Cc:** Bromm, William (CAB)
**Subject:** Updated Materials

Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.

- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.

- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.

- **Please reply-all with any edits by 11:00AM**.

- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.

- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report ~~entitled~~ on ~~*The*~~ *Ontario's Fair Hydro Plan (OFHP).~~ ~~*: Concerns About Fiscal transparency, Accountability and Value For Money*~~.

~~Ontario's Fair Hydro Plan (OFHP)~~OFHP is delivering the single-largest reduction in electricity rates in the province's history. In ~~the~~ develop~~ment~~ing ~~of~~ OFHP~~, which includes a rebate equal to the provincial portion of the Harmonized Sales Tax, shifting the funding of specified electricity support programs to provincial revenues and refinancing a portion of the Global Adjustment (GA)~~, the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure ~~appropriate~~ due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. .

~~To relieve the current burden on ratepayers and share costs more fairly, OFHP is refinancing a portion of the GA, which~~The Global Adjustment (GA) pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations do not "create accounting rules" or "legislate the accounting". This is a fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

~~As previously noted,~~Some costs of OFHP ~~is comprised of a series of policy decisions, some of which~~ will be borne by taxpayers and some ~~of which~~ will be borne by ratepayers. The accounting~~, the final analysis and documentation of which will be completed by the year-end, once the transaction is complete,~~ will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

**Commented [MD(1]:** Is this verbatim? Please provide page number/section number.

OPG is beginning the process of raising funds to finance the~~se~~ deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since FAO released its report in May 2017 and ~~OPG's and its financing entity's~~ borrowing costs are now forecast to be substantially lower than original estimates. ~~As a result, c~~Current government estimates forecast that the peak debt over the 30-year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments ~~highlighted~~ above, and given that implementation of OFHP is ~~still~~ ongoing with significant accounting and financing decisions still being finalized, the government believes that this report by the OAG is premature and does not reflect the substance of this transaction.

**GOVERNMENT RESPONSE TO OAG REPORT ON THE FAIR HYDRO PLAN**

The government of Ontario does not agree with the assertions and conclusions expressed by the Office of the Auditor General (OAG) in its report on *Ontario's Fair Hydro Plan (OFHP).*.

OFHP is delivering the single-largest reduction in electricity rates in the province's history. In developing OFHP, the government considered a range of implementation options. The government consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed. OFHP operates under a financial and accounting framework that is appropriate for the intended purpose and in accordance with Public Sector Accounting Standards (PSAS) and ensures that the fairness goals underlying the program are achieved in a cost-effective manner.

The government has been making important investments in a cleaner and more reliable energy system, but these investments have led to higher electricity bills. OFHP has introduced new measures to lower electricity bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. As many as half a million small businesses and farms are also benefitting from a reduction.

Since 2003, nearly $70 billion has been invested in the electricity system, including more than $37 billion in electricity generation to ensure the system is clean and reliable. The majority of the province's electricity generators operate under 20-year contracts. Despite the OAG's assertion that it is "not at all" certain if these generating assets will be operating beyond their contract lives, third-party experts have confirmed that many of these generators will be able to continue to operate. This means that generating assets are expected to have ongoing useful life and benefit future ratepayers by reducing the need to finance the development of new generating assets. .

The Global Adjustment (GA) pays for the majority of the recent investments in the electricity system. Refinancing the GA provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built. Despite the OAG's assertion that the government's intention was to avoid recording a deficit in the fiscal plan, the decisions made to implement GA refinancing most effectively achieves the goals of the refinancing program and ensures that the deferred costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base. The accounting for this transaction will reflect the substance of this transaction.

With respect to the Province's financial statements, they are prepared in accordance with Canadian PSAS and will follow PSAS in accounting for the transactions resulting from OFHP in 2017-18 as well as in the following years. As PSAS is set by an independent standard setting body in Canada focused specifically on the public sector, and because PSAS is used by all senior governments in Canada, presenting its financial statements in accordance with PSAS results in transparent financial reporting for the Province of Ontario.

The government of Ontario also disagrees with two fundamental accounting assertions in the report of OAG related to *legislated accounting* and *rate-regulated accounting*:

- Legislated Accounting – The *Ontario Fair Hydro Plan Act, 2017* and its related regulations <u>do not</u> "create accounting rules" or "legislate the accounting". This is a

fundamental disagreement with the report of the OAG. As previously noted, the Province will prepare its consolidated financial statements in accordance with PSAS.

- Rate-Regulated Accounting – In commenting on the use of rate-regulated accounting and the role of the Ontario Energy Board (OEB), the report of the OAG makes reference to a requirement under U.S. accounting standards in connection with the use of rate-regulated accounting that "there must be an independent regulator". This reference is misleading as it does not provide the criteria in its entirety, which is as follows:

  *The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers*** *[ASC 980-10-15-2].*

The U.S. accounting standard was developed specifically not to preclude the application of rate-regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent [FAS 71, par. 64]. In addition, the position that rate-regulated accounting is precluded because the OEB is not considered independent of the government of Ontario is contradictory to accepting the use of rate-regulated accounting by Ontario Power Generation (OPG) and Hydro One, both regulated by the OEB and whose results, using rate-regulated accounting, are and have been included in the consolidated financial statements of the Province.

Some costs of OFHP will be borne by taxpayers and some will be borne by ratepayers. The accounting will reflect the economic substance of the transactions in accordance with PSAS and will differentiate those costs of OFHP borne by taxpayers vs. those borne by ratepayers. The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate.

OPG is beginning the process of raising funds to finance the deferred costs, and while total borrowing costs will not be known until the transaction is complete, accumulated interest is projected to be considerably less than the estimates in the report of the Financial Accountability Office (FAO), cited by the OAG. Total borrowing estimates over the thirty year life of the program have been revised down substantially by the government since FAO released its report in May 2017 and borrowing costs are now forecast to be substantially lower than original estimates. Current government estimates forecast that the peak debt over the 30-year life of OFHP will be below $20 billion. The preliminary estimate from March 2017 was about $28 billion.

Based on the comments above, and given that implementation of OFHP is ongoing with significant accounting and financing decisions still being finalized, the government believes that this report by the OAG is premature and does not reflect the substance of this transaction.

| | |
|---|---|
| **From:** | Ken Kandeepan |
| **To:** | Anna Strathy; Gadi Mayman; Ronald Kwan |
| **Cc:** | Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 8:41:34 AM |

Hi Anna

Agree with Ron's and Gadi's comments plus here are a few from me.

Government Response

Page 1: 4th para 2nd sentence the reference to third party experts, since the Navigant report has or will be released to the AG why not include a reference. "third party experts, including a recent report from Navigant that will be provided to the OAG, have confirmed….."

Page 2: Last para, last sentence now reads as: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate". Suggest revising as follows: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, this treatment will not reflect the economic substance of the program since the benefits of the GA refinancing accrues to ratepayers".

Consolidated Comments

One small suggested edit to our contribution. The third para first sentence now reads as follows: "The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets)".

Suggest that it be revised to :" The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful life of the assets).

Note the typo in "life" in the original.

Thanks

Ken k

---

**From:** Anna Strathy
**Sent:** Tuesday, October 03, 2017 9:50 PM
**To:** Gadi Mayman ; Ken Kandeepan ; Ronald Kwan ; Mike Manning
**Subject:** Fwd: Updated Materials

FYI attached, and please let me know if you have any comments as soon as possible.

Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 3, 2017 at 8:57:03 PM EDT

**To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
**Subject: Updated Materials**

Hi all,
I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Gadi Mayman; Anna Strathy |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Tuesday, October 03, 2017 11:47:42 PM |
| **Attachments:** | Ontario-Hydro_Annual-Report-98-99.pdf<br>OEFC_Annual-Report-2001.pdf<br>OEFC_Annual-Report-2003.pdf<br>AG FHP Report - Consolidated Comments - Oct 3 840pm TRACKED_Markup.docx |

---

Hi,

I added in a comment on the OEFC row, as follows:

> Suggest providing the 2000-2001 Annual Report instead, as it shows the first two years of OEFC's financial statement results, including the "revenue pool residual" (or "proxy DRC"), which was the allocation to OEFC from the continuing bundled rate of the old Ontario Hydro that continued on until the market opened to competition on May 1, 2002, and the rates were unbundled and the DRC began. Could also include the 2002-03 Annual Report too, which discusses the revenue pool residual amounts coming in until the DRC started.
>
> Could also include the final Ontario Hydro Annual Report too, which shows its positive operating results, before writedowns, and significant debt pay down, under the amounts of revenue collected through the bundle rate (which was frozen for about eight years (referred to as six years of stable rates in the OH AR plus the first two years of OEFC) – demonstrating the debt cost recovery was in place before April 1, 1999..

And ARs, as attached, as well as the markup.

Ron

---

**From:** Ronald Kwan
**Sent:** October-03-17 11:02 PM
**To:** Gadi Mayman ; Anna Strathy
**Cc:** Ken Kandeepan ; Mike Manning
**Subject:** RE: Updated Materials

Hi Gadi,

I was just noting the "was" typo correction too. And agreed on the need for a comma.

Ron

---

**From:** Gadi Mayman
**Sent:** October-03-17 10:57 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Re: Updated Materials

In our paragraph near the end of the government response, the second mention of FAO should have a "the" in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don't have numbers in their title?)

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word "way" instead of "was". In the first paragraph, I think it reads more clearly if, in the last sentence, between "as an asset and" and "in accordance with" we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with "in accordance with the accounting

definition." Since I'm being unnecessarily fussy, let me even go as far as to suggest if we do that, we could get rid of the second and in the sentence: "... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. "

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, and please let me know if you have any comments as soon as possible. Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> > **Date:** October 3, 2017 at 8:57:03 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
> > **Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> > **Subject: Updated Materials**
> >
> > Hi all,
> > I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
> > **Next Steps**:
> > - In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
> > - Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
> > - The key focus at this point should be the government response. At this stage, changes to the consolidated

comments should be kept to a minimum.

- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

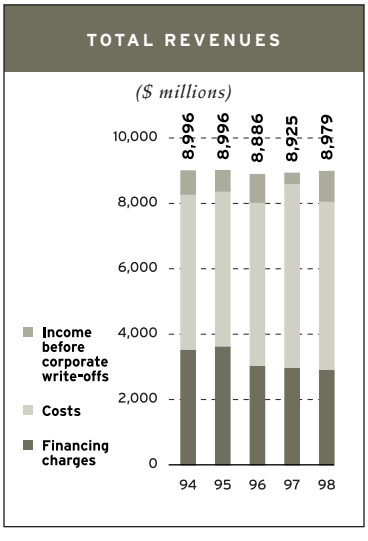
CHAIRMAN

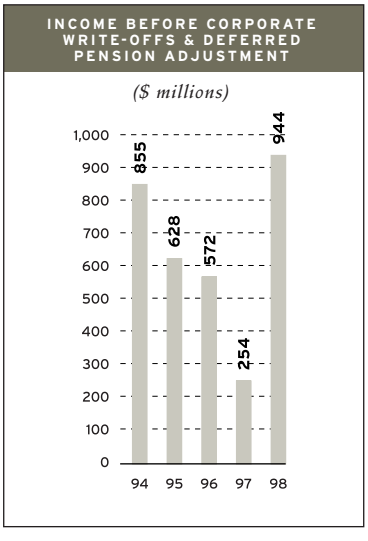
## CONTENTS

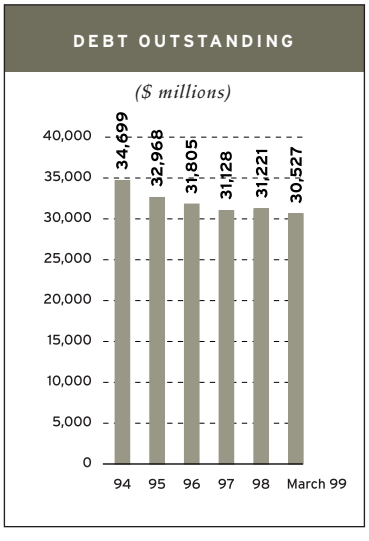

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

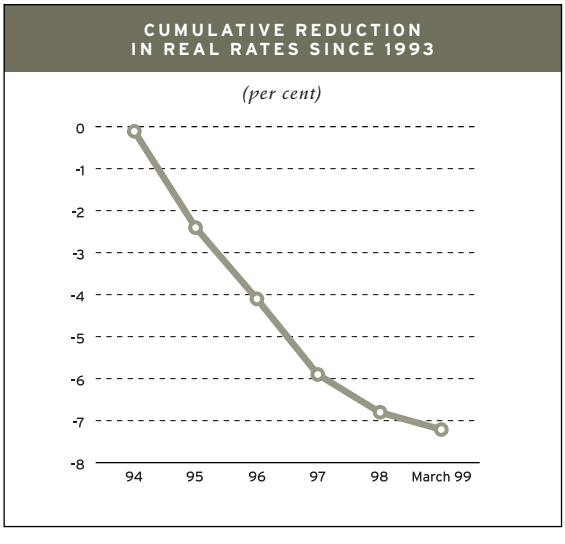
# Ending on a High Note

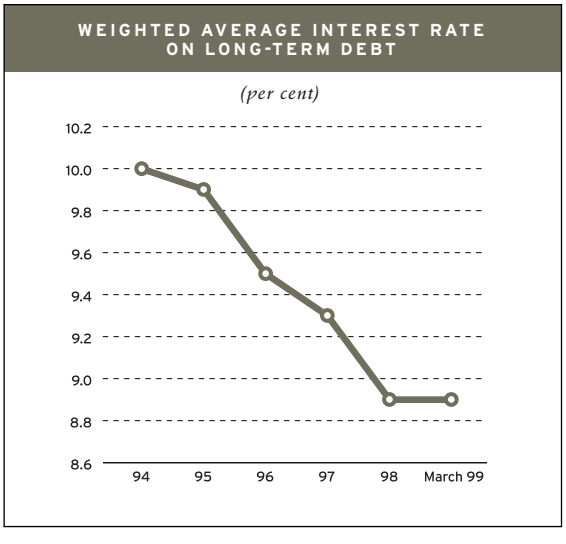
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

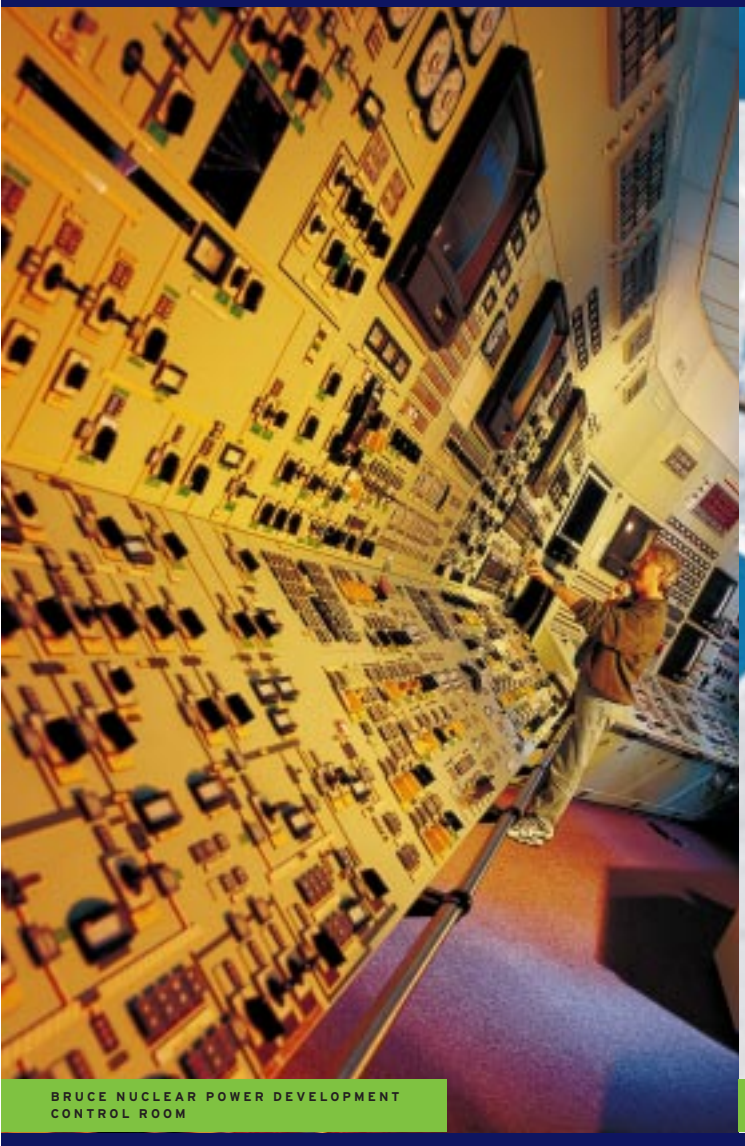
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

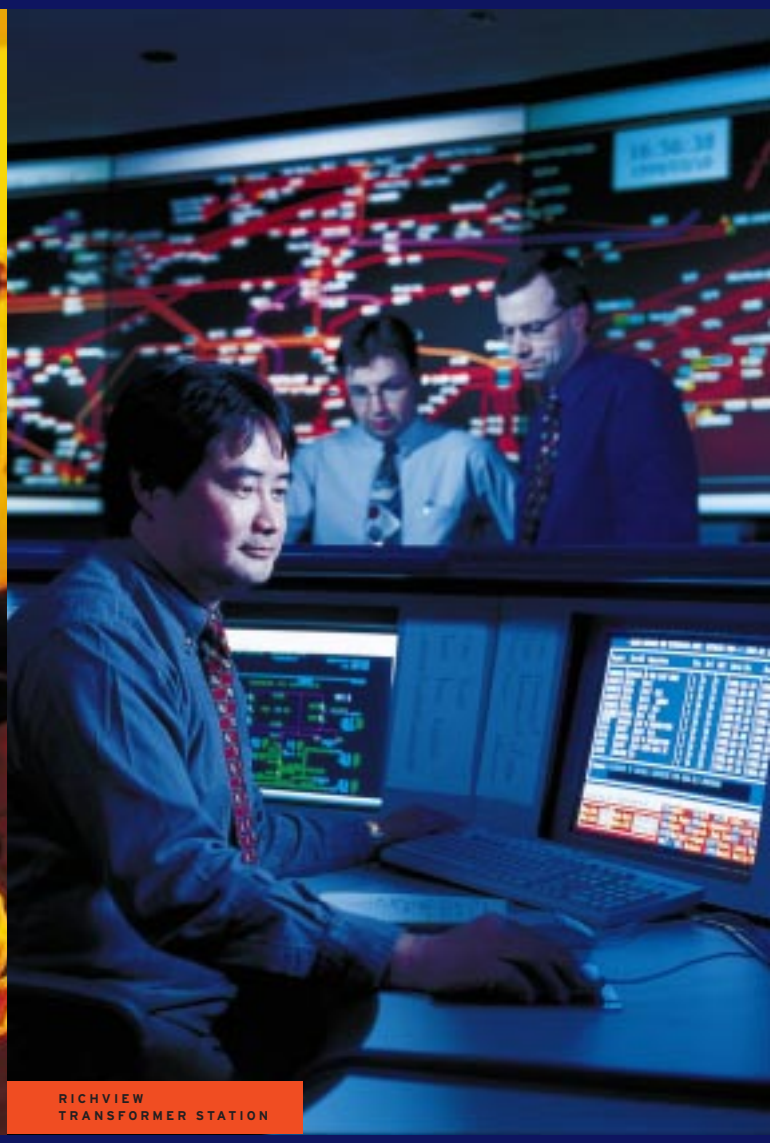
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

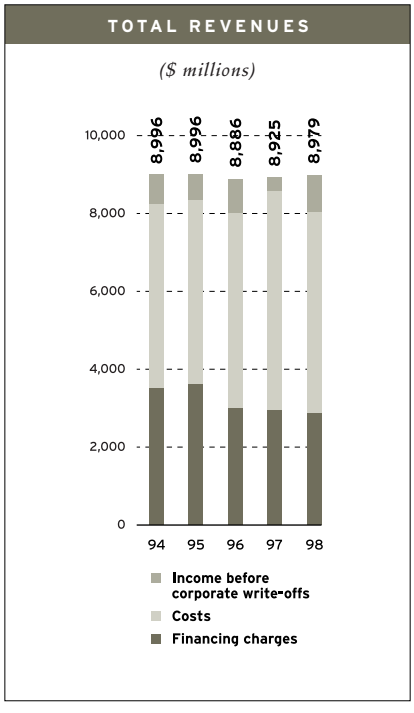
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

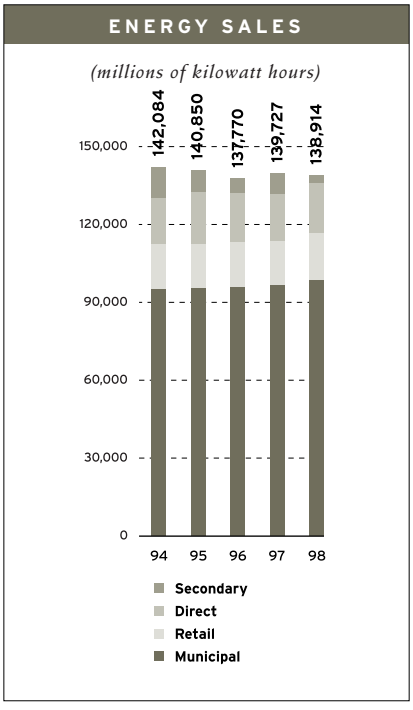
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



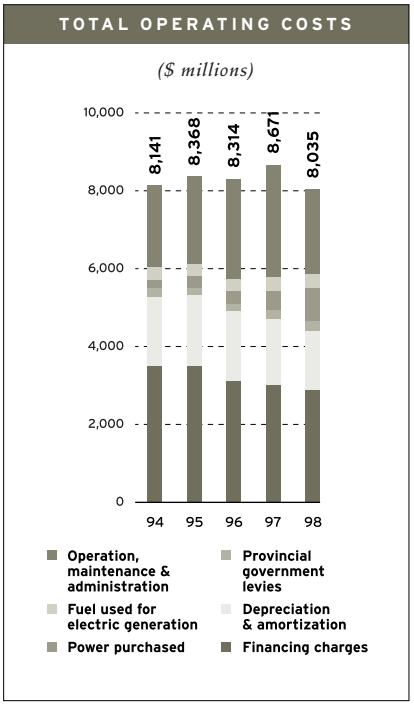

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

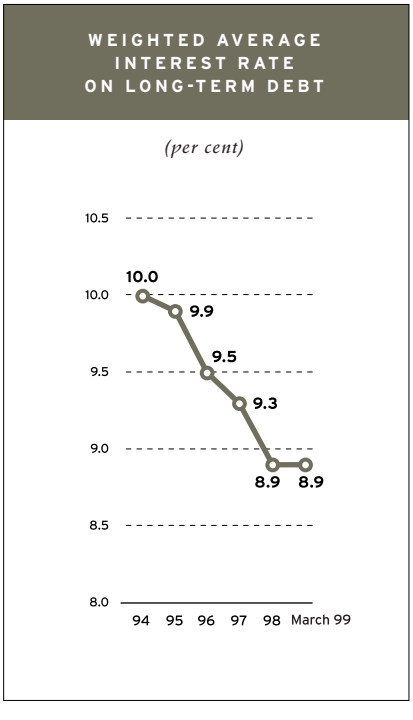
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

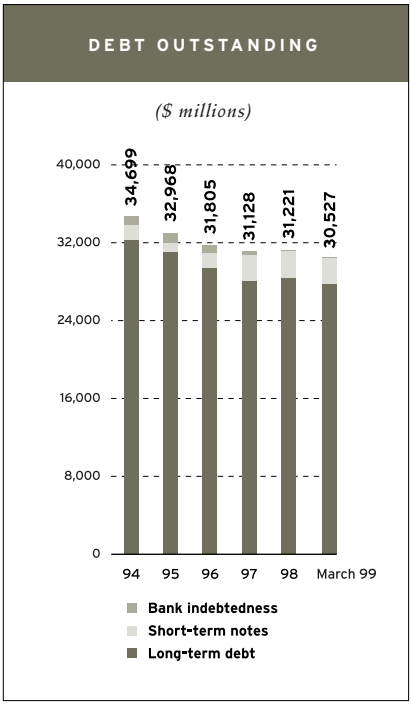
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

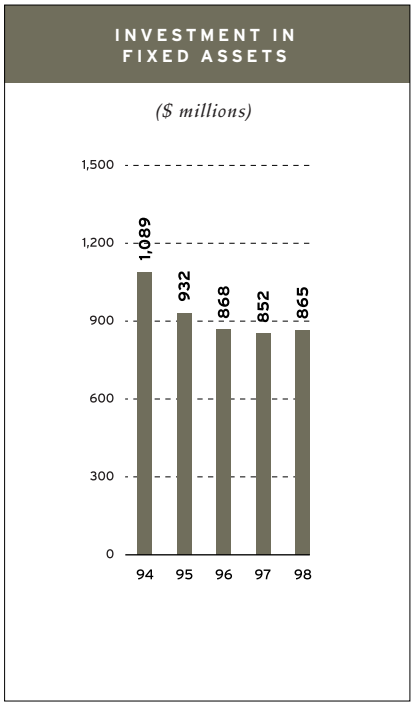
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

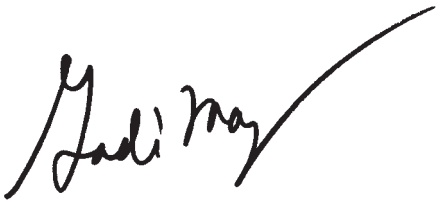
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

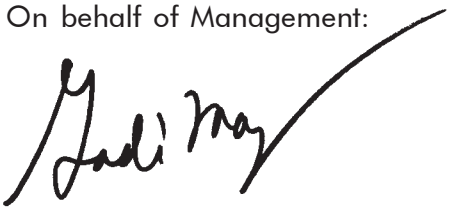
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

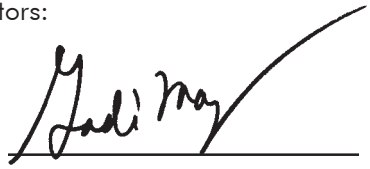
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

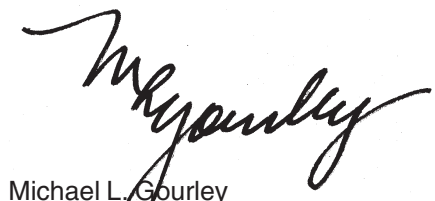
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by ~~(~~specified~~)~~ electricity ratepayers, as beneficiaries of those electricity system costs. | |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~***cost not expected to exceed $60,000***~~ *~~for a maximum of $500,000~~, to* ***provide search services and to compile emails responsive to our request.*** ~~*receive help from a law firm to review the Ministry's emails before providing them to us.*~~ *At the time we completed this Special Report, the Ministry had* ***provided us with*** ~~***over 4,000***~~ ***6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000***~~*. still not provided us with all of its emails, which we requested on May 31, 2017."*~~<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only 41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments ~~4,063 documents,~~ as of October 3, 2017~~September 26, 2017~~. The Ministry does not intend to spend more than $60,000 on this request. | ~~TBD~~NY |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall** ~~the government needs to borrow cash to cover the shortfall~~"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the FHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection). | N |

**Formatted:** Strikethrough

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Suggest correcting this reference throughout the AG report. | |
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>~~Add additional language to this sentence to provide for a more balanced tone.~~DSuggest delete ~~ing~~ this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure appropriate due diligence was completed." | N |

**Formatted:** Strikethrough

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | | |
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>~~Delete this sentence to provide for a more balanced tone.~~ Delete ~~removing~~ reference to "around" as it is inaccurate. ~~as g~~Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N~~/A~~ |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by ~~Ontario Financing Authority (OFA)~~ the Province in borrowing money for its equity infusions into OPG. | ~~TBD~~N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts).<br><br>~~Suggest also removing the reference to future ratepayers not owing anything until they consume electricity in the future.~~ | ~~TBD~~Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | OEFC 2000-2001 [and 2016-17 ]Annual Report[s] |

**Commented [RK2]:** Suggest providing the 2000-2001 Annual Report instead, as it shows the first two years of OEFC's financial statement results, including the "revenue pool residual" (or "proxy DRC"), which was the allocation to OEFC from the continuing bundled rate of the old Ontario Hydro that continued on until the market opened to competition on May 1, 2002, and the rates were unbundled and the DRC began. Could also include the 2002-03 Annual Report too, which discusses the revenue pool residual amounts coming in until the DRC started.

Could also include the final Ontario Hydro Annual Report too, which shows its positive operating results, before writedowns, and significant debt pay down, under the amounts of revenue collected through the bundle rate (which was frozen for about eight years (referred to as six years of stable rates in the OH AR plus the first two years of OEFC) – demonstrating the debt cost recovery was in place before April 1, 1999.

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences.~~,~~ T~~t~~he latter ~~was~~ had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what ~~is~~ will be collected and what will be paid ~~out~~ to ~~the~~ generators ~~is going to~~will be set up as an asset and, in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. This was a normal regulatory practice which matched the timing of the capital cost recovery with the benefit to the ratepayer. The DRC represented the unbundling of a portion of the debt service costs. ~~that~~ It effectively ~~represented the effective amortisation~~ amortized the ~~of~~ cost ~~recovery~~ of the investments in long-lived assets (including debt incurred). ~~to cover the cost to invest in long-lived assets. This was a normal practice and would have been very unusual to recover the investment capital outlay in the years invested from those ratepayers and unfair, as the benefit of those assets would be in place for decades. As such, it was fair to incur debt and recover those costs over time, including as continued on through the DRC post-1999.~~ | |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that was already spreading the cost recovery of the debt over time.<br><br>The penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | |
| 4.3 | 13 | The first sentence of the second paragraph states:, As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used to appropriate account for rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of the Fair | N |

**Commented [MD(1]:** OFA comment:
FYI for OPCD – we changed this from "accumulated surplus" to "accumulated deficit" to be consistent with the way it is reported in the Budget.

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Hydro Plan will be assessed for recognition based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | |
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is ~~factually incorrect~~incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | ~~TBD~~N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting | Y |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations.<br><br>Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. ~~because t~~The ~~-~~IESO ~~b~~Board made the decision to amend its financial statements. | Y |
| ~~4.5~~ | ~~15~~ | ~~The third paragraph notes "Our research has confirmed that the IESO is the only…" is factually incorrect. The Ontario Power Authority reported rate regulated assets. As an example, the December 31, 2008 financial statements are attached. The Ontario Power Authority was consolidated on a line by line basis in the consolidated financial statements of the Province.~~ | ~~Y – December 31, 2008 financial statements~~ |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG). | Y |

**Commented [MB3]:** OPCD to review

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

DRAFT

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Gadi Mayman; Anna Strathy |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Tuesday, October 03, 2017 11:46:36 PM |
| **Attachments:** | Ontario-Hydro_Annual-Report-98-99.pdf<br>OEFC_Annual-Report-2001.pdf<br>OEFC_Annual-Report-2003.pdf |

---

Hi,

I added in a comment on the OEFC row, as follows:

> Suggest providing the 2000-2001 Annual Report instead, as it shows the first two years of OEFC's financial statement results, including the "revenue pool residual" (or "proxy DRC"), which was the allocation to OEFC from the continuing bundled rate of the old Ontario Hydro that continued on until the market opened to competition on May 1, 2002, and the rates were unbundled and the DRC began. Could also include the 2002-03 Annual Report too, which discusses the revenue pool residual amounts coming in until the DRC started.
>
> Could also include the final Ontario Hydro Annual Report too, which shows its positive operating results, before writedowns, and significant debt pay down, under the amounts of revenue collected through the bundle rate (which was frozen for about eight years (referred to as six years of stable rates in the OH AR plus the first two years of OEFC) – demonstrating the debt cost recovery was in place before April 1, 1999..

And ARs, as attached.

Ron

---

**From:** Ronald Kwan
**Sent:** October-03-17 11:02 PM
**To:** Gadi Mayman ; Anna Strathy
**Cc:** Ken Kandeepan ; Mike Manning
**Subject:** RE: Updated Materials

Hi Gadi,

I was just noting the "was" typo correction too. And agreed on the need for a comma.

Ron

---

**From:** Gadi Mayman
**Sent:** October-03-17 10:57 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Re: Updated Materials

In our paragraph near the end of the government response, the second mention of FAO should have a "the" in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don't have numbers in their title?)

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word "way" instead of "was". In the first paragraph, I think it reads more clearly if, in the last sentence, between "as an asset and" and "in accordance with" we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with "in accordance with the accounting definition." Since I'm being unnecessarily fussy, let me even go as far as to suggest if we do that, we

could get rid of the second and in the sentence: "... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. "

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, and please let me know if you have any comments as soon as possible. Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 3, 2017 at 8:57:03 PM EDT
> **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
> **Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> **Subject: Updated Materials**
>
> Hi all,
> I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
> **Next Steps**:
> - In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
> - Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
> - The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.

- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.
Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

# More than energy

ONTARIO HYDRO FINAL ANNUAL REPORT
JANUARY 1998 – MARCH 1999

Ontario Hydro

**CORPORATE PROFILE** Ontario Hydro ceased operations on March 31, 1999; its assets and functions were transferred by provincial statute to two commercial successor corporations, Ontario Power Generation Inc. and Ontario Hydro Services Company Inc., as well as to two not-for-profit agencies, the Independent Electricity Market Operator and the Electrical Safety Authority.

Ontario Hydro, a self-sustaining corporation without share capital, was created by provincial statute and operated under the *Power Corporation Act* of Ontario, which has now been succeeded by the *Energy Competition Act, 1998*. Bonds and notes issued by Ontario Hydro prior to April 1, 1999, are guaranteed by the Province of Ontario.

Until the demerger of the company on April 1, 1999, Ontario Hydro served 108 direct industrial customers, almost one million retail customers and 255 municipal utilities, which in turn serve almost 3 million customers.

Ontario Power Generation (OPG) inherited Ontario Hydro's generating portfolio, making it one of the largest power producers in North America in terms of installed capacity. The OPG system includes 69 hydroelectric stations, three nuclear sites and six operating fossil-fueled stations. Total installed system capacity is approximately 31,000 megawatts. Ontario Hydro's total energy sales in 1998 were almost 139 terawatt-hours.

Ontario Hydro Services Company (OHSC), the other successor company, is an energy-services-based transmission and distribution company. It owns and maintains 29,000 kilometres of transmission lines, 114,700 kilometres of distribution lines, 240 kilometres of high-voltage underground cable, 256 transformer stations, 928 distribution and regulating stations and 20 microwave stations. OHSC also retains the retail business formerly held by Ontario Hydro, which serves over 950,000 customers, and the transmission and generating business for 23 remote communities in Northern Ontario.

## LETTER TO THE MINISTER

To the Honourable Jim Wilson,
Minister of Energy, Science and Technology:

I am pleased to submit to you Ontario Hydro's report of the financial position of the Corporation, as of March 31, 1999, when operations ceased, in accordance with provincial statute. This 15-month report also contains discussion and analysis of issues and initiatives for 1998-99 and beyond.

We want to thank your staff at the Ministry of Energy, Science and Technology for their cooperation during this period of great change in Ontario's electricity sector.

WILLIAM A. FARLINGER

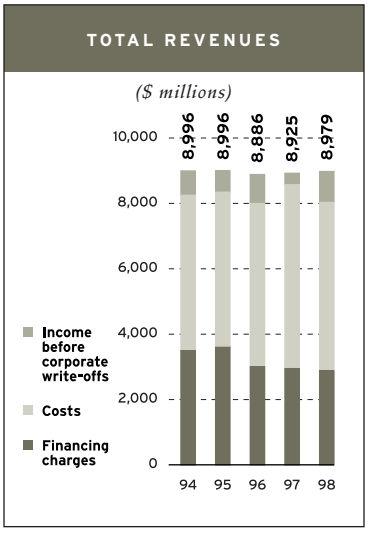
CHAIRMAN

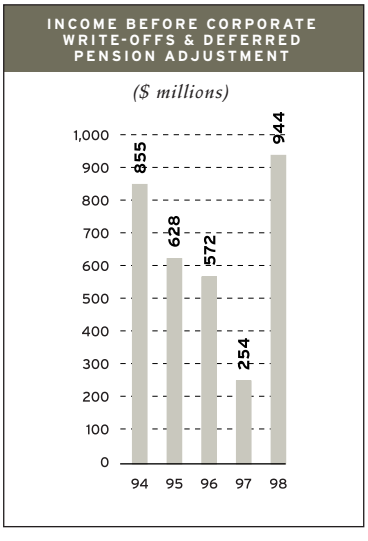
## CONTENTS

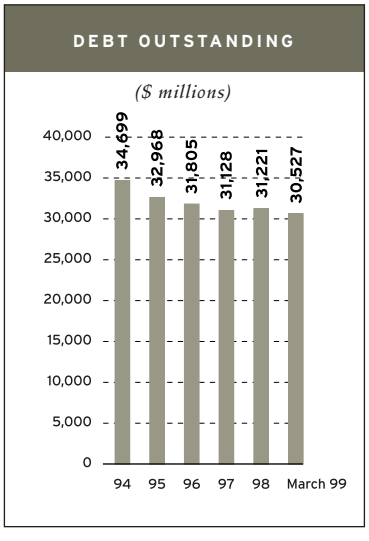

| | |
|---|---|
| A Message from the Chairman and the President | 2 |
| Ontario Hydro's Successors | 5 |
| More Than Energy | 6 |
| Operations Report | 12 |
| Financial Section | 29 |
| Corporate Governance Practices | 69 |
| Board of Directors | 71 |
| Organization and Corporate Officers | 72 |

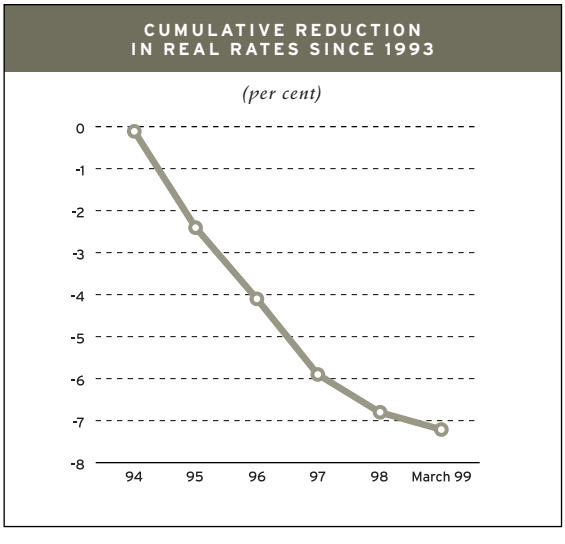
# Ending on a High Note

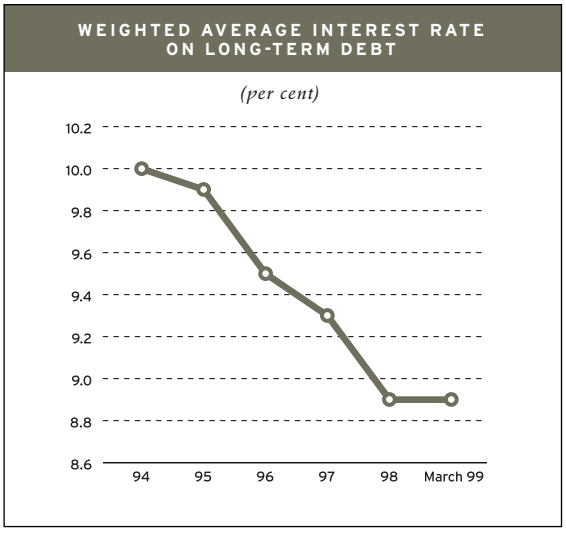
**DESPITE THE MANY OPERATIONAL AND RESTRUCTURING CHALLENGES OF 1998 AND THE FIRST QUARTER OF 1999, ONTARIO HYDRO'S FINANCIAL HISTORY CONCLUDES ON A HIGH NOTE.** REVENUES AND NET INCOME WERE STRONG AND SIX YEARS OF STABLE RATES HAVE SIGNIFICANTLY REDUCED ELECTRICITY COSTS AS A PROPORTION OF PROVINCIAL ECONOMIC ACTIVITY, BOOSTING ONTARIO'S ENERGY PRODUCTIVITY AND, AS A RESULT, ITS INDUSTRIAL COMPETITIVENESS.



# Reliability and Commitment During Challenges and Change

**WILLIAM FARLINGER**
Chairman

**RONALD OSBORNE**
President & CEO

**FROM WINTER ICE STORM TO SUMMER HEAT WAVE, FROM THE NEED TO RELIABLY MEET ONTARIO'S ELECTRICITY DEMAND TODAY TO THE MANDATE TO LOOK BEYOND ONTARIO TOMORROW, ONTARIO HYDRO'S FINAL 15 MONTHS AS AN OPERATING ENTITY WERE FILLED WITH GREAT CHALLENGES AND GREAT CHANGE.** THROUGHOUT IT ALL, OUR EMPLOYEES DISPLAYED EQUAL MEASURES OF COOPERATION AND COMPETITIVENESS. THEY ARE ONTARIO HYDRO'S MOST VALUABLE LEGACY TO THE FUTURE.

**We are preparing for competition; our aim is to make our commercial successor companies successful in the new energy services marketplace.**

This is the Final Annual Report of Ontario Hydro, which ceased operations on March 31, 1999; its assets and functions have been transferred to successor companies and agencies. For this reason, the 1998 Annual Report was delayed to include a report on the company's final quarter.

The 15 months since our last Annual Report was a historic period for Ontario Hydro and the province's electricity industry. It began with the most devastating ice storm on record and the largest emergency power restoration effort ever undertaken by Ontario Hydro and its municipal utility allies in Eastern Ontario. Record summertime peak demand briefly approached the limits of our current in-service generating capacity. By the end of 1998, a new provincial statute, the *Energy Competition Act, 1998*, had rewritten the fundamental rules under which our industry has operated throughout most of this century. And these are only the major highlights of the period.

Despite unprecedented demands on Ontario Hydro's people, everything that happened during this period strengthened our conviction that we will be prepared for competition and that both commercial successor companies will be successful in the emerging North American energy services marketplace.

Our response to the ice storm showed how deep the reservoir of our organizational and technical skills really is and how committed our people are to the safety and well-being of our customers, regardless of the conditions that must be braved or workloads endured. They proved once again that reliability begins with people and that only people can sustain it.

But the wires networks are only one side – the delivery side – of the reliability equation. The other is supply reliability, and here too Ontario Hydro's generation staff, at our nuclear, hydroelectric and fossil-fueled stations, proved their resourcefulness and commitment to customers.

To replace the output of reactors laid up under the Nuclear Asset Optimization Program (NAOP), the Fossil business boosted its production to its highest level in more than a decade, and did so without exceeding provincial air emissions regulations. In Hydroelectric, production was constrained by low water levels, but staff nonetheless extracted every possible kilowatt out of their facilities. Both businesses, along with Central Market Operations, helped ensure that Ontario suffered no supply interruptions during the record spikes in summer peak demand that threatened shortages in other areas of North America.

The Nuclear business made substantial progress towards its multi-year goal of moving performance back to the top quartile of world nuclear industry standards. When Ontario Hydro's generating portfolio was assumed by Ontario Power Generation Inc. (OPG) on April 1, 1999, nuclear production and capability factors were up; forced outages were down; most performance targets were exceeded; and new agreements with our unions gave us more operational flexibility to speed the recovery to excellence and help position the company to seize more quickly the growing opportunities in the U.S. power marketplace.

All of the above was accomplished, moreover, during the restructuring of the corporation in line with the passage of the *Energy Competition Act, 1998*. This legislation marks Ontario as the first jurisdiction in North America to plan to introduce electricity competition at both the

wholesale and the retail level at the same time. The Act ended Ontario Hydro's statutory existence and replaced it with two legally separate, commercially oriented successor companies – OPG and Ontario Hydro Services Company Inc. (OHSC). At the same time, Ontario Hydro's Central Market Operator became yet another separate entity, the Independent Electricity Market Operator (IMO), which will not only oversee the marketplace but direct the operation of the transmission system owned by OHSC. Municipal electric utilities and the Ontario Hydro Services Company alike are required to separate their monopoly wires businesses from their competitive merchant functions. Finally, Ontario Hydro's responsibility for electrical inspection throughout the province was transferred to a not-for-profit public agency, the Electrical Safety Authority.

These changes, large as they are, define only the barest framework of what Ontario's electricity marketplace will look like once competition is introduced by the government, expected sometime in the year 2000. Rules to assure both suppliers and customers of a level playing field must be fully developed before competition can begin. Much of this work was done during 1998 by the multi-stakeholder Market Design Committee (MDC), established at the beginning of 1998 to advise the government on detailed marketplace rules.

The MDC proposed a ten-year, staged reduction of Ontario Power Generation's control over provincial electricity supply, accompanied by measures to ensure price stability during the transition period when competition is first being established. As part of the proposal, the Ontario Hydro Services Company will make every effort to increase the province's interconnection capacity by 50% over the next five years. This plan has been accepted by the government. The future has begun.

The two commercial successor companies will use the remainder of 1999 to finalize their preparations for the open marketplace. One of their critical tasks will be to help customers prepare as well. Public education programs, through advertising and other forms of customer outreach, will be prominent this year. It is important to the success of customer choice that they understand the marketplace and their own energy service needs. Both companies will work with others in the industry to promote that understanding among all customers, not just their own.

In 1999, Ontario Hydro's successors will also finalize plans to ensure that the province enters the new millennium on January 1, 2000, without any interruption of power. Analysis, remediation, testing and Y2K-readiness certification of all critical systems was complete by the end of 1998. Coordination with suppliers, customers and interconnected systems will take place throughout the first half of 1999. All signs point to a successful rollover into 2000, but contingency planning is under way for the sake of prudence and public reassurance.

Throughout these final months, even as we planned for the future, we were determined not to lose our focus on what is most critical to our customers every single day: safety, reliability, service and competitive prices. We looked forward to the future, but we lived and worked in the present. Our customers' needs always took precedence. No matter what else may change for our successor companies, this basic operating principle will not.

As our successors move closer to a competitive future, they will build on Ontario Hydro's historic achievements. We expect that the new companies will contribute to the prosperity of Ontario in the next century at least as much as Ontario Hydro did in this one.

# Ontario Hydro's Successors

**THE YEAR 1998 WAS THE 92ND AND LAST FULL YEAR OF OPERATIONS FOR ONTARIO HYDRO. ON APRIL 1, 1999, IT WAS SUCCEEDED BY FIVE NEW SUCCESSOR ENTITIES, TWO OF WHICH ARE SEPARATELY MANAGED, COMMERCIALLY ORIENTED COMPANIES. THESE SUCCESSORS WERE INCORPORATED IN LATE 1998.**

### ONTARIO POWER GENERATION INC.

Ontario Power Generation (OPG) inherits Ontario Hydro's 31,000 megawatts of installed generating capacity at its 80 hydroelectric, nuclear and fossil-fueled stations, making it one of North America's largest power producers. OPG is very cost-competitive with U.S. generators in our region of the continent – a growing market for low-unit-cost, low-emission energy.

OPG facilities now supply about 85% of the province's electricity demand. Under an agreement with the provincial government, that proportion will be gradually reduced so that by about 2010, OPG will control no more than 35% of the province's total supply options. The company will increasingly compete in the U.S., as markets there open to competition.

### ONTARIO HYDRO SERVICES COMPANY INC.

Ontario Hydro Services Company (OHSC) is a holding company with two major holdings: the 29,000-kilometre transmission grid and the 114,700-kilometre distribution system. It serves almost one million customers, mostly in rural and remote communities.

OHSC plans to leverage its infrastructure assets and the expertise of its employees to enter new businesses that will contribute to the company's growth and shareholder value.

### INDEPENDENT ELECTRICITY MARKET OPERATOR

The Independent Electricity Market Operator (IMO) will serve two major functions in Ontario's electricity market. It will manage the spot market, reconciling transactions among buyers and sellers; and direct the operation of the provincial transmission system to ensure reliability and fair access under market rules. The IMO will have no commercial connection to any market participant.

### ELECTRICAL SAFETY AUTHORITY

The Electrical Safety Authority will continue Ontario Hydro's former inspection service. It is a stand-alone, self-funded entity with no commercial ties to any utility or other energy services company.

### ONTARIO ELECTRICITY FINANCIAL CORPORATION

The Ontario Electricity Financial Corporation is a Crown agent responsible for servicing and retiring Ontario Hydro's provincially guaranteed debt. It provides the risk management, cash management, banking and accounting services to manage and retire the debt. The OEFC is also responsible for administering the pension assets of Ontario Hydro until they can be allocated among the successor companies' pension plans.

Safety

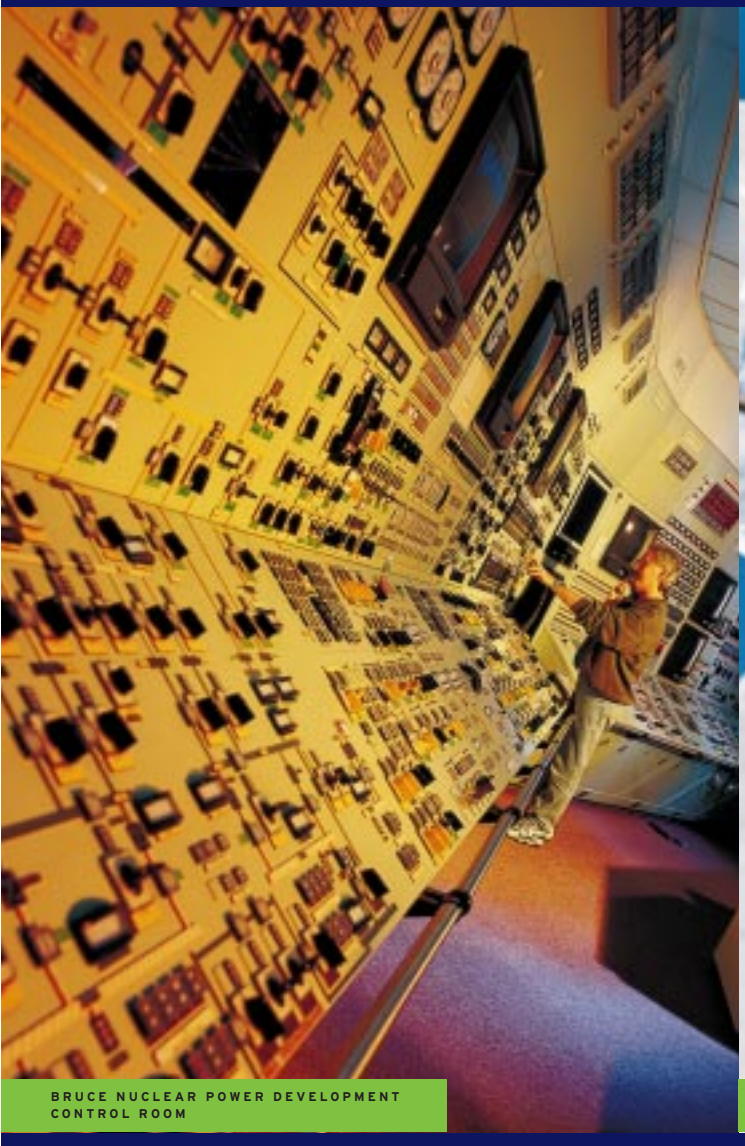
Reliability

Competitiveness

Customer Service

# Safety

## OUR PARAMOUNT DUTY TO ONTARIO



BRUCE NUCLEAR POWER DEVELOPMENT CONTROL ROOM

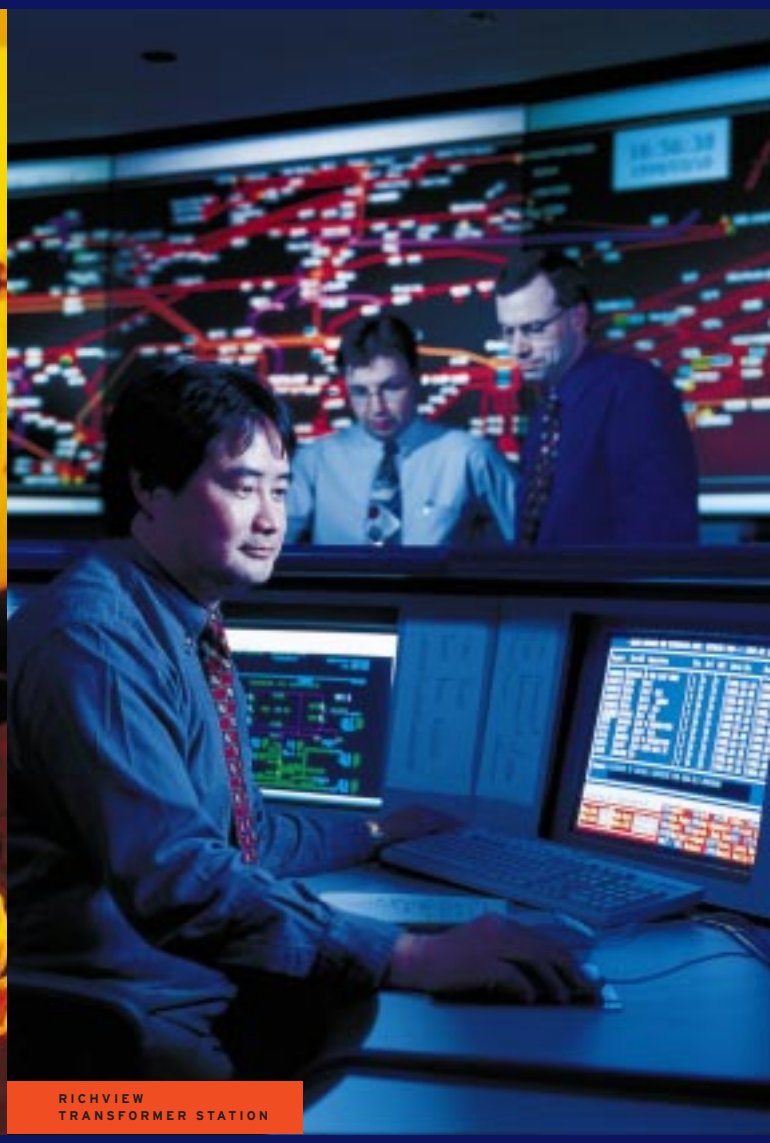
ONTARIO HYDRO CREW MEMBERS WORK TO RESTORE POWER DURING THE 1998 ICE STORM

**MAKING ELECTRICITY SAFER TO PRODUCE, DELIVER AND USE HAS ALWAYS BEEN THE INNERMOST OF ONTARIO HYDRO'S CORE VALUES – THE EVER-PRESENT TOUCHSTONE AGAINST WHICH WE TEST EVERYTHING WE DO.** We were never completely satisfied with anything less than a flawless record for employee and public safety in every aspect of Ontario's power system over which we have control. Nor will our successor companies be.

# Reliability

## YOU CAN COUNT ON US

NANTICOKE
GENERATING STATION



RICHVIEW
TRANSFORMER STATION

**FOR OVER 90 YEARS, ONTARIO HYDRO WAS ONE OF NORTH AMERICA'S MOST RELIABLE SUPPLIERS OF ELECTRICITY, A REPUTATION FOR PERFORMANCE THAT ITS SUCCESSOR COMPANIES WILL UPHOLD.** Our deeply embedded reliability culture was always evident in our ready adoption of new technologies and ongoing investments. But it was most vividly displayed during 1998's ice storm recovery.

# Competitiveness

## OUR BEST IS GETTING BETTER

Y2K TESTING AT THE MANBY TRANSFORMER STATION

GENERATOR UPGRADE AT SIR ADAM BECK 2 G.S.

**PRICE, QUALITY, INNOVATION, SERVICE – THE HALLMARKS OF COMPETITIVENESS.** Ontario Hydro's successor companies take pride in being among the worldwide utility industry leaders in all these areas. But we know that even the largest competitive advantage can be sustained only by continuous improvements in our knowledge, efficiency and responsiveness to customers. To hit our targets in future, we must aim even higher than we have in the past.

# Customer Service

## YOUR NEEDS DEFINE OUR GOALS

MARKHAM CALL CENTRE

AN ONTARIO HYDRO REPRESENTATIVE AT INCO SMELTING PLANT

**ENSURING A RELIABLE SUPPLY OF POWER WAS LONG ONTARIO HYDRO'S DOMINANT CUSTOMER SERVICE VALUE.** In the competitive marketplace, however, there are as many service objectives as there are customers; each relationship can be unique. OPG and OHSC, Ontario Hydro's commercial successors, see this new reality as an opportunity to provide an ever-expanding array of services that customers say they need and value.

**ONTARIO HYDRO HAS FULFILLED THE AMBITIOUS MANDATE OF ITS VISIONARY FOUNDERS.** A vast and sturdy network of wires brings electricity to everyone in Ontario. The hydroelectric potential of the province has largely been tapped. New technologies and processes have been readily embraced. Many major industries, the main source of Ontario's prosperity in this century, were attracted here by Ontario Hydro's low-cost, abundant power. These achievements are an enduring legacy to Ontario, as well as to the commercial corporations that succeed Ontario Hydro in the new era of customer choice. Bridging the accomplishments of the past and the opportunities of the future are four defining values: safety, reliability, competitiveness and customer service. Each of these is grounded in Ontario Hydro's traditional strengths. And each has been carried forward into the successor companies, guiding them to new achievements – beyond the imagination of Ontario Hydro's founders, perhaps, but not beyond their values.

# Operations Report

IN A TIME OF CLIMATIC EXTREMES, UNPRECEDENTED OPERATIONAL CHALLENGES AND HISTORIC RESTRUCTURING LEGISLATION, THE PEOPLE OF ONTARIO HYDRO NEVER LOST FOCUS ON THEIR CORE MISSION: RELIABLY AND SAFELY MEETING PROVINCIAL ELECTRICITY DEMAND. AT THE SAME TIME, THEY IMPROVED ASSET VALUE, LAUNCHED NEW SERVICES, ENHANCED CUSTOMER RELATIONSHIPS AND RESPONDED TO EMERGENCIES WITH PROFESSIONALISM AND COMMITMENT.

# The Demerger Project

**ORCHESTRATING THE LARGEST CORPORATE DEMERGER IN CANADIAN HISTORY** TO ENSURE ITS SUCCESSOR COMPANIES WERE FULLY OPERATIONAL ON APRIL 1, 1999, WAS ONTARIO HYDRO'S FINAL SUCCESS.

The seamless transition of Ontario Hydro into its successor companies without even a momentary interruption of critical activities was the mission of the Demerger Project launched in mid-1998. Nearly one hundred employees were directly assigned to the complex undertaking and over one thousand more were indirectly involved at some point. The project was guided by the provincial government's 1997 White Paper on electricity industry restructuring and its enabling legislation, the *Energy Competition Act, 1998*.

A Demerger Project Office was charged with coordinating, monitoring and expediting the approximately 800 separate project activities identified by a Task Implementation Committee and assigned to one of six Task Working Groups, each responsible for a key aspect of the transition. An overview of the project's accomplishments:

• **Corporate Finance Restructuring.** The financial architecture of the new business entities was defined, including their debt/equity structures, credit ratings, asset valuation, initial balance sheets and business plans. The approach taken for each successor business involved balancing three key considerations: establishing a competitive electricity marketplace; allowing for the enhancement of shareholder value; and optimizing the repayment of the provincially backed Ontario Hydro debt.

• **Governance/New Legislation.** Transfer Orders for transfer of assets, contracts, liabilities, litigation and staff to the successor companies were prepared for government execution, and operating licences for OPG and OHSC were obtained from the regulator, the Ontario Energy Board. This area of activity also involved coordinating Ontario Hydro's position on restructuring legislation and regulation and recommending a schedule for the proclamation of sections of the *Energy Competition Act, 1998 (ECA)* and repeal of corresponding sections of the law it superseded, the *Power Corporation Act (PCA)*.

• **Operations.** The specific functional requirements of each successor company were identified and addressed. These included each entity's organizational structure and staffing, initial operating plans and budgets, and due diligence in areas such as environment, contingency/emergency planning and First Nations considerations. Of particular importance in this area was coordinating the complex functional needs of large projects under way prior to demerger planning, such as the Nuclear Asset

**The Demerger Project built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.**

Optimization Plan, that were critical to the operation of a successor company.

• **Legal/Transition Issues.** All of Ontario Hydro's legislative and regulatory obligations under the *PCA* were transferred to a successor, in accordance with the new legislation. Some of these responsibilities, such as the regulation of municipal electric utilities, were assigned to regulatory bodies, such as the Ontario Energy Board.

• **Corporate Functions.** The necessary infrastructure for services and functions previously provided by a business unit in Ontario Hydro was developed for each successor. Services such as purchasing, health, security, telecom, real estate, information technology, corporate records, investment recovery and office space were provided through inter-company service agreements or make/buy decisions. Functions such as law, human resources, audit, finance, pension, treasury and corporate affairs were similarly addressed.

• **Human Resources.** Each employee of Ontario Hydro as of March 31, 1999, was transferred to a successor company, which had in place all necessary records and applicable labour agreements, as well as pension, compensation, benefits, and health and safety plans.

A full report on all the above activities was provided to each successor company prior to April 1. This report included an analysis of the subsequent work to be completed before the government declares the Ontario electricity market open to competition.

The success of the Demerger Project was twofold. Not only did it meet all its objectives, it also allowed everyone else in the corporation to continue devoting all their time and expertise to serving Ontario Hydro customers and, after the transition date, the customers of its successors. It built the bridge between the achievements of our singular past and the opportunities that lie in our separate futures.

# Excellence Today Means Competitiveness Tomorrow

**GETTING READY TO COMPETE AS ONTARIO POWER GENERATION IN WHAT WILL SOON BE ONE OF THE WORLD'S LARGEST POWER MARKETPLACES,** THE GENERATION COMPANY INCREASED OPERATIONAL EFFICIENCIES, TECHNOLOGICALLY UPGRADED SEVERAL FACILITIES AND MADE SUBSTANTIAL PROGRESS TOWARDS ITS GOAL OF BECOMING ONE OF THE WORLD'S TOP PERFORMERS.

## NUCLEAR

Ontario Hydro Nuclear (OHN) made substantial progress during the last 15 months towards its multi-year goal of bringing its operations back into the top quartile of global nuclear industry performance.

Early in 1998, the Board of Directors approved the Integrated Improvement Program (IIP), the operational underpinning of the Nuclear Asset Optimization Plan (NAOP) that had been recommended in 1997 by the Nuclear Performance Advisory Group. The NAOP called for the temporary lay-up of eight reactor units at Pickering A and Bruce A and the concentration of OHN resources on the remaining 12, four each at Pickering B, Bruce B and Darlington.

By the end of April 1998, the major elements of the IIP had been identified, including milestone dates and key deliverables. A team from the World Association of Nuclear Operators (WANO) visited Pickering, Bruce and Darlington in the spring of 1998 and confirmed that the IIP was a comprehensive statement of the problems needing correction in OHN and that the program was sound. Key areas for performance improvement included the planning and execution of planned outages; the implementation of standardized policies, procedures and processes; and the establishment of an organization needed to achieve all objectives.

By March 1998, the four Pickering A units were safely laid up, following some 100,000 hours of work. Most of the staff were then transferred to Pickering B to work on IIP projects on those four reactors. In March as well, the Board reconfirmed its August 1997 decision to temporarily lay up Bruce A units 3 and 4 in order to free up more resources for the IIP. The Bruce lay-up work began in April 1998 and will be completed in 1999. Some of the Bruce A staff moved over to the Bruce B units; others have been deployed to Darlington.

The most fundamental indicator of nuclear performance improvement is a composite index based on nine measures specified by WANO:

- Capability Factor
- Safety System Performance
- Chemistry Performance
- Unplanned Capability Loss Factor
- Thermal Performance
- Collective Radiation Exposure
- Reactor Trip Rate
- Fuel Reliability
- Industrial Safety Accident Rate

By the end of the first quarter of 1999, the OHN Performance Index had reached a level of 69.2

– out of a total index of 100 – exceeding its target for the fifth consecutive quarter and bettering by nearly 11 index points the level at the end of 1997.

### Stakeholder Communications

In late 1997, OHN began issuing monthly performance report cards to keep government and other stakeholders apprised of nuclear recovery progress. These report cards continued throughout 1998 and into 1999. In addition to the WANO-specified OHN Performance Index, the card also reported on 14 other monthly performance indicators, grouped in the following four areas:

- Public Safety
- Production Performance
- Environment
- Employee Safety

Of the 15 indicators on the monthly report card, OHN had met or exceeded the target in 12 categories by the end of March 1999, compared with only six at the end of January 1998. In the area of Production Performance, for example, OHN's net electrical production for 1998 was 59.9 terawatt-hours, compared with the target, 56.3 terawatt-hours; and the capability factor was better than its target, as was the total of outage days per unit.

While these numbers were very encouraging, Nuclear is determined to accelerate IIP progress during the remainder of 1999, to improve its ability to supply competitively priced power in the Ontario and North American energy marketplaces as they open to competition.

### Also in the Reporting Period

In March 1998, Pickering was granted a 12-month operating licence by the Atomic Energy Control Board, and in March 1999, the licence was renewed for a further two years. In November 1998, Darlington was granted a two-year licence renewal.

In the first quarter of 1998, the Bruce Heavy Water Plant was decommissioned.

Between June and December 1998, Pickering set a new employee safety record of 2.6 million person-hours worked without a lost-time injury.

### Nuclear Waste Management

Ontario Hydro has always had responsibility for the management of nuclear waste in a manner that is safe, as well as environmentally, socially and financially responsible. Finding a safe and acceptable long-term way to manage Canada's nuclear fuel waste has been studied for several years by the federal government, with support from Ontario Hydro. In December, a major step towards this goal was taken when the government of Canada responded to the report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel.

Ontario Hydro welcomed the federal government response and the direction it provided for the long-term management of nuclear fuel waste in Canada. Work is continuing with the federal and Ontario governments and other Canadian nuclear utilities to implement work programs designed to achieve the goals of the federal government's nuclear waste management policy.

### Isotope Sales

Ontario Power Generation also succeeds Ontario Hydro as the world's largest supplier of the radioactive isotopes cobalt 60 and tritium, and is one of the largest suppliers of deuterium oxide (heavy water). These isotopes, which are byproducts of the company's Nuclear operations,

**Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets.**

are in great demand in the medical, industrial and research sectors. Isotope sales have consistently met business plan projections while contributing to Ontario Hydro's net income.

### FOSSIL

The Fossil business was called on to dramatically increase its production during 1998 and the first quarter of 1999 to offset reductions in Nuclear. It delivered 35 terawatt-hours of energy in 1998 – its highest production level in over a decade. As a result, provincial electricity supply reliability and service to export customers was never compromised, even during the unprecedented surge in summer peak demand.

In the first quarter of 1999, even with strong secondary sales and January production that was the highest for any single month this decade, Fossil production was slightly below target because of higher than expected Hydroelectric and Nuclear production.

Despite facing unusual production demands during 1998, Fossil met or bettered all of its key performance targets, including those related to the environment. Generating-unit reliability was significantly better than targeted levels and, at the same time, both OM&A and fuel unit energy costs were kept under budget. Not only did the business meet its ambitious safety targets, but its performance in this area was the best ever.

To achieve this dramatic increase in production from previous years, Fossil stepped up virtually all its production plans. Throughout the period, reliability and flexibility were the hallmarks of Fossil's operation. When very favourable market conditions developed, Fossil was able to quickly change its plans – by realigning maintenance outages, fuel deliveries and staffing – to take advantage of higher prices.

Another key factor in Fossil's performance was its fuel supply program, which had to be ramped up quickly but economically. During 1998, the program not only provided the 15 million tons of coal and 3 million barrels of oil required to generate 35 terawatt-hours, it also was able to increase the proportion of low-sulphur, high-quality coal in the fuel mix. This helped ensure that the business met acid gas emission regulations and self-imposed emission rate targets for both acid gas and carbon dioxide emissions.

In December, the Thunder Bay plant achieved ISO 14001 certification, and at Lennox the return to service of two mothballed units was completed. Also late in the year, the Lennox plant celebrated the successful completion of its gas pipeline and boiler conversion project, enabling two of the plant's four units to burn both natural gas and oil. The conversion lowers the plant's operating costs by about 20%. It also reduces sulphur dioxide, nitrogen oxide and greenhouse gas emissions by about 25%.

The Nanticoke and Lambton plants made progress on major remedial programs, including a variety of turbine and boiler projects that will improve future reliability, operating efficiency and environmental performance. In addition, Nanticoke made modifications so it could use natural gas instead of oil in the furnace ignition system, as well as to fire a coal drying process to improve the combustion of lower-cost, low-sulphur coal from the western United States. The plant also completed installation of new burners on five of its eight generating units, reducing nitrogen oxide emissions from those units by about 30%.

### HYDROELECTRIC

A shortened spring snow melt coupled with below-normal precipitation across the province

**Hydroelectric invested $134 million on refurbishment programs and completed significant portions of its Environmental Management System ISO 14001 certification.**

resulted in Hydroelectric's total 1998 energy production from its 69 generating stations being 2.7 terawatt-hours less than the target of 34.6. The lower water levels, however, gave the Hydroelectric business the opportunity to perform necessary facility maintenance and more aggressively implement its ongoing program of capital investments. During the year, the 14th unit of a 16-unit rehabilitation program was completed at Robert H. Saunders Generating Station. At the Sir Adam Beck 2 Generating Station, the third and fourth units of a 16-unit upgrade were completed, with new runners and major components replaced or refurbished. In total, Hydroelectric invested $134 million in 1998 on these and other refurbishment programs.

Also in 1998, Hydroelectric completed significant portions of a program leading to ISO 14001 certification of its Environmental Management System (EMS) for its production facilities. The EMS ensures that Hydroelectric facilities are operated in a manner that meets internationally recognized quality standards for environmental performance, which is increasingly important in a competitive marketplace.

Hydroelectric formed a Small Hydro Division in 1998, comprising 26 stations accounting for almost 2% of the total Hydroelectric capacity. The new division creates a more distinct business focus for these assets, providing a greater degree of operational flexibility and better positioning them for the growing consumer interest in environment-friendly power.

Hydroelectric had many occasions to celebrate both its past and present achievements in 1998. In March, Ear Falls G.S. was reopened after a fire in 1997 that badly damaged the powerhouse and the generators. The station was refurbished in record time, complete with a new powerhouse and four new generators.

In August, celebrations marked the 100th anniversary of DeCew Falls G.S. 1 in St. Catharines, Ontario's oldest operating hydroelectric station. Other significant service milestones this year were the 50th anniversary of Stewartville G.S. on the Madawaska River and the 40th anniversary of Robert H. Saunders G.S. on the St. Lawrence River. These celebrations were all reminders of the enduring value of our hydroelectric system and give greater meaning to our reinvestments to preserve and enhance our ability to produce safe and reliable energy from a renewable water resource.

### WORKING WITH OUR CUSTOMERS

Our core product is electricity but our flexibility in pricing, supply conditions, energy services and account management allowed us to tailor offerings to best meet customer needs.

Here are some examples of how Ontario Hydro strengthened customer relationships through new services, communications and business initiatives.

- Customers learned how to understand and benefit from the coming competitive electricity marketplace through the *Quest – Learning Together* series of day-long sessions held throughout the year.
- Customers participating in the Interconnected Market Gain Sharing Program made money in June 1998 during a major price spike in the U.S. Northeast. The program allowed firm power customers to reduce their purchases in exchange for a share of OPG's gains from selling power at higher market prices.
- In response to customer demand, Ontario Hydro designed a wholesale green power offering that is EcoLogo certified. It includes new and existing renewables such as small hydro, landfill gas and wind.

# Focused on Reliability – Poised for Growth

**MAINTAINING AND IMPROVING WIRES NETWORKS THAT COULD CIRCLE THE GLOBE NEARLY FOUR TIMES WAS THE FIRST RESPONSIBILITY OF ONTARIO HYDRO SERVICES COMPANY.** THE SECOND WAS THE GROWTH OF COMPETITIVE BUSINESSES THROUGH THE MARKETING OF ENERGY, NETWORK AND RELATED SERVICES THAT CUSTOMERS WANT, NEED AND VALUE.

### ICE STORM SHOWCASES CRISIS CAPABILITIES

The fundamental strengths of Ontario Hydro Services Company (OHSC) were never more impressively illustrated than in January 1998, when over 600,000 people in an area of 25,000 square kilometres in Eastern Ontario lost power during the most severe ice storm on record. In five devastating days, the sheer weight of unprecedented accumulations of ice – nearly twice the typical amount for an entire year – literally crushed the electricity system. Hundreds of steel transmission towers crumpled. Seven thousand wooden distribution poles snapped like matchsticks, bringing 1,800 pole-top transformers down with them. By the time it was over, the storm had damaged 40% of Eastern Ontario's transmission and distribution systems.

Local OHSC and municipal crews began power restoration efforts even before the storm abated, and reinforcements quickly flowed into the region from across the province and beyond. At the peak of the effort, nearly 2,200 front-line workers laboured 16 hours a day, seven days a week, in piercing cold and sometimes blizzard-like snowstorms. Over half were Ontario Hydro staff; the rest were from other utilities in Ontario and elsewhere. Nearly 1,000 Canadian Armed Forces personnel worked tirelessly alongside the utility crews. Behind the scenes, hundreds more OHSC staff orchestrated the supply lines, answered a quarter-million calls from worried customers, and handled the countless details that went into speeding the recovery. Within two weeks, over 90% of all affected Ontario Hydro residential and business customers had their power restored, an incredible feat by any standards. A post-event analysis led to an updating and reorganization of OHSC emergency response procedures, so that if such an event occurs again, the recovery would be even quicker.

The historic response of Ontario Hydro Services Company staff to the ice storm will long serve as the reminder we all perhaps need occasionally that the most important element of power system reliability is the human one. The skill, dedication and professionalism brought by OHSC staff to this crisis are with us all year long. They are the reason OHSC is confident it can continue to maintain the transmission and distribution reliability standards Ontario has come to expect, and do so with increasing efficiency and continuously renewed sensitivity to our customers' needs.

### ASSET MANAGEMENT BUSINESS MODEL

OHSC has adopted an asset management

**The fundamental strengths of OHSC were illustrated in January 1998, during the most severe ice storm on record.**

business model for its wires networks that separates decisions on the investments needed to maintain and improve assets from the actual work on those assets. Under this model, which is also in use at best-practice utilities worldwide, OHSC's Network Asset Management Group makes the investment decisions and the Network Services Group performs the work. This approach ensures reliability and optimum use of assets with the most efficient use of OHSC's human and financial resources.

At the transmission level, the new model has been implemented with the creation of the Transmission Operation Management (TOM) Centre – OHSC's link to other key electricity system participants: suppliers, customers, the Independent Electricity Market Operator (IMO) and Network Services. The centre also coordinates and implements emergency response plans during significant transmission system events. It also contains Outage Management, System Performance, Operating Effectiveness and Operating Strategy Implementation departments.

At the distribution level, OHSC has launched its new Distribution Operations Management Centre, which will take over responsibility for answering after-hours trouble calls for the entire province by September 15, 1999. The centre allows much better coordination of work crews and lets us inform customers when they can expect their power to be restored. Eventually, the Distribution Operations Management Centre will operate a sophisticated Distribution Outage Management System, which will further improve customer service.

OHSC has also initiated a major re-engineering of its business processes, with a new work management, material management and financial system and an upgrade of computer technology infrastructure.

### NEW GENERATION PLANT IN REMOTE NORTHERN COMMUNITY

To ensure future reliability to the Northern logging community of Armstrong, the Remote Communities program installed a new diesel generating plant comprising three generators with a total capacity of 2,550 kilowatts (kW) and a prime rating of 1,450 kW. Peak load in the service area is now 900 kW, allowing community and local industry growth. The prime rating of the existing 25-year-old plant was being exceeded. With the old plant located close to a trout stream, relocation to another, lower-risk site was the preferred option.

The new installation incorporates the latest in operational and environmental controls, such as a SCADA system. It is housed in a diesel plant that employs the most up-to-date environmental technology for these remote applications.

As part of the legal separation of OPG and OHSC, a special legislative provision was put in place to keep the generation business within OHSC in remote Far North communities.

### CUSTOMER COMMUNICATION CENTRES UPGRADED, EXPANDED

The centralized Customer Communication Centres (CCC), which celebrated their first full year of operation in 1998, experienced their "trial by ice" in January by fielding as many as 30,000 calls a day in round-the-clock operations. An analysis of the ice storm response led to the installation of new call flooding technologies that enable automated reporting of outages directly from the customer to the appropriate service centre.

During the year as well, a Customer Loyalty Centre was set up within CCC's operation. The centres handle billing and service inquiries and

issues for over 900,000 retail customers. The Customer Loyalty Centre works with customers to quickly resolve their concerns, taking corrective or compensatory action when necessary. By tracking complaints, the centre can help determine the nature and scope of service failures and assist in identifying policy and process changes that lead to improvements.

Consolidating the customer telephone service to the Customer Communication Centres allowed the extension of service hours: customers can now call from 7:30 a.m. until 6:00 p.m. This year the centres will increase availability to customers even more. Although 24-hour emergency outage response service has always been provided, a new call answering system will be brought on line, allowing a higher volume of outage emergency calls. As well, the centres will implement a further extension to hours, opening up our regular lines until 8:00 p.m.

### OH TELECOM VENTURE

OHSC began preparing in 1998 to launch telecommunications. As a "carriers' carrier," OH Telecom may transmit data and voice communications through its optical fibre network in Ontario for clients such as long-distance telephone carriers, Internet service providers and corporations with large-scale data transfer requirements.

### RETAIL MERCHANT COMPETITIVE SERVICES

Commercially oriented services were introduced by OHSC in 1998. Indeed, this is an example of the OHSC strategy of building competitive businesses by leveraging existing assets and expertise. All its non-regulated energy services are offshoots of its resident skills and are aimed at identified market opportunities that have been carefully analyzed for their growth potential.

### PAYONE PROGRAM LAUNCHED

PayONE is a sophisticated bill consolidation and utility accounting service aimed at commercial and institutional customers with multiple sites, such as restaurant chains, property management companies, retailers and school boards. The program, piloted with McDonald's locations in Ontario, collects all the utility bills the customer receives (such as electricity, gas, water and sewage), verifies them, pays the utility and sends a single, electronic consolidated bill in a format that best suits the customer's needs. Besides freeing up accounting staff and saving customers money in other ways, the service provides utility usage and cost profiles, trending and benchmarking that will support operating decisions and help set budgets. PayONE signed up several clients in 1998 and more are expected in 1999.

### CUSTOM SOLUTIONS

Commercial and industrial energy management is a growing business sector and Custom Solutions is already in this business, with some early notable successes under its belt. The largest was a project to identify, design, implement and finance utility cost-saving opportunities for Cadillac Fairview at 18 commercial properties across Ontario. Total savings of $1.1 million annually were identified on a one-time investment of $3.2 million.

Other services include PowerSelect, which addresses power quality requirements, and Utility Accounting and Analysis. This latter service, among other things, simplifies, compares and analyzes billing data for multi-site customers and gives them a historical view of their electricity consumption and operating costs.

### NORTHWIND TORONTO PROJECT

OHSC, in a commercial alliance with Toronto

Hydro and Unicom Thermal Technologies of Chicago, is developing Canada's first major district cooling project, which will provide services in Toronto's downtown core.

### OPEX 2000

In January 1999, OHSC's program to achieve operational excellence was launched. By overhauling old processes or introducing new ones, OpEx 2000 will enable OHSC to optimize capital and productivity, and deliver excellent customer service. In short, through OpEx 2000, we will ensure we are running effectively and efficiently – and that we have what it takes to thrive in the competitive marketplace.

Several key processes and initiatives, critical to business success, constitute OpEx 2000: Customer Service; Distribution Network Asset Management; Transmission Network Asset Management; Design and Construction; Resource Management (Scheduling and Bid/Work Ordering); Operations, Maintenance and Restoration; Logistical Support (Trades Training, Supply Management, Fleet Management); Facility Management; Performance Management; Health, Safety and Environment; and Change Management/Communications.

In 1998, OHSC Forestry achieved the type of productivity gains to be realized through OpEx 2000 process improvements. Through such measures as the consolidation of crews, use of temporary work headquarters to reduce traveling time and the establishment of clear performance objectives, more work was accomplished, more safely, in 1998 than in 1997. This achievement is even more significant given the fact that all regular forestry work had to be suspended for six weeks in early 1998 because of the ice storm restoration demands.

### LARGE-SCALE YEAR 2000 TEST

On March 6, 1999, Ontario's first major test of Y2K readiness of OHSC's transmission network was successfully conducted without any interruption of power to the 180,000 customers of Toronto Hydro that might have been affected. At midnight, the SCADA system for Manby Transmission Station and the seven other transmission stations it controls, as well as all associated protection and communications equipment, underwent a simulated rollover to midnight, January 1, 2000. While each of these systems had been previously tested individually and certified Year 2000 ready, this was the first test of all the equipment working together. The test then continued until the clocks on the equipment successfully passed the simulated date of February 29, 2000, another critical date because next year is a leap year.

### ARC2000 PROJECT

Another key program was launched in the first quarter of 1999 to develop an information technology architecture for OHSC that will govern how the business acquires, builds, modifies and uses information technology (IT) resources, from applications and databases, to network, software and hardware components. OHSC's independence, and the expanded information demands of an open marketplace, require considerable investment in these areas. Electronic interactions with the Independent Electricity Market Operator and generating companies, emerging regulatory requirements and both the OpEx 2000 and Market Ready initiatives are examples of significant IT-enabled projects either in progress or in the advanced planning stages. ARC2000 will establish an integrated framework of principles, specifications, standards and directions to guide these and all other such projects in OHSC's future.

**Ontario Hydro's investment in Luz del Sur yielded a 16% dividend as the Peruvian electricity distribution company continued to grow and improve productivity.**

### PHASE SHIFTERS AUGMENT MICHIGAN-ONTARIO CONNECTION

Under the terms of the recently signed Michigan-Ontario Interconnection Facilities Expansion Agreement between OHSC and two Michigan utilities, two phase-shifting transformers will be installed and operational by mid-2000 at Lambton and another will be installed in Michigan by Detroit Edison, along with a new autotransformer. This joint project will enhance electricity transactions between the two jurisdictions and increase Ontario's capacity to import from the U.S. and relieve congestion on the east-to-west movement of power.

### GREENCHOICE GENERATION

Some customers want to choose to have part of their electricity come from renewable energy sources. Through our GreenChoice Generation pilot, some of OHSC's retail customers have that option. Although "green" energy costs slightly more, some companies are willing to pay the extra dollars to know that green power is being added to the grid. GreenChoice Generation customers receive a plaque showing how much of their energy comes from environment-friendly sources and are authorized to use the EcoLogo symbol on company letterhead and promotional materials.

### ONTARIO HYDRO INTERNATIONAL INC.

Ontario Hydro International's 15% investment in Luz del Sur yielded a 16% dividend for 1998 as the Peruvian electricity distribution company continued to grow and improve productivity. Although the Peruvian economy was hit by adverse El Niño weather and affected by the Asian economic slowdown, Luz del Sur's energy sales grew by 10% as the number of customers grew by 2%. Continuing efforts to improve the performance of the distribution system resulted in a 17% reduction in energy losses.

During 1998, Ontario Hydro assisted Luz del Sur to introduce a state-of-the-art thermovision unit for preventive maintenance on its transmission and distribution network. This technology will help LDS further reduce operations and maintenance costs.

In Central America, OHII directed Ontario Hydro's assistance to Honduras in the wake of Hurricane Mitch. Hydro pledged $500,000 for expertise and equipment to help restore electricity to the devastated country. Two technicians were quickly sent to work with the Honduran utility to assess reconstruction needs.

# Gateway to the Electricity Marketplace

**CENTRAL MARKET OPERATIONS' ROLE AS THE MINUTE-BY-MINUTE GUARDIAN OF ONTARIO'S TRANSMISSION SYSTEM SECURITY DID NOT CHANGE** WHEN IT BECAME THE PROVINCE'S INDEPENDENT ELECTRICITY MARKET OPERATOR, BUT ITS MANDATE WAS GREATLY ENLARGED TO INCLUDE MANAGEMENT OF ONE OF NORTH AMERICA'S LARGEST POWER MARKETPLACES.

Ontario Hydro's Central Market Operations (CMO) has faced extraordinary challenges during the past 15 months, beginning with the January 1998 ice storm, which felled several large sections of the transmission system in Eastern Ontario. During the storm and its aftermath, CMO staff worked around the clock, and in close cooperation with both the Generation and Services companies, to deal with the numerous outages, adjust system equipment and minimize the impact of the storm on the rest of Ontario and on interconnections with other jurisdictions.

Six months later, another climatic extreme, this time a prolonged heat wave in several large areas of North America, shattered peak power demand records and put unprecedented pressures on the continental interconnected network. Again, CMO staff worked closely with the rest of Ontario Hydro and with other jurisdictions to not only meet the province's record demand but also export power to other jurisdictions. Despite these challenges posed by the heat wave and the ice storm, CMO met or exceeded all performance targets of the North American Electricity Reliability Council (NERC) throughout this period.

In addition to safeguarding bulk electricity system security, CMO staff played a key role in the development of Ontario's future competitive electricity marketplace. CMO specialists were represented on all technical panels of the government-appointed Market Design Committee, as well as on the rules drafting team and the Coordination Committee.

### CMO TO IMO: THE TRANSITION

During 1998, work began on the infrastructure program to transform CMO into the Independent Electricity Market Operator (IMO) called for in the *Energy Competition Act, 1998,* the provincial legislation that restructures Ontario's electricity system. This program, which will continue throughout the rest of 1999, will deliver the design, development, documentation, testing, commissioning and implementation of the critical operational infrastructure of the IMO. By year-end, independent systems for financial and treasury management were already in place, and the entire program is on schedule to meet all deadlines required for the opening of the marketplace.

# Ontario Hydro Corporate Activities

## Sustainable Development: A Key Element of Future Competitive Success

Environmental performance is increasingly viewed as a key customer consideration that will grow in importance as the competitive power market matures. Given similar prices, many customers will prefer a supplier with a strong environmental track record. Market research shows that many customers are willing to pay at least a modest premium for power that they know has been produced in environmentally sensitive ways. Moreover, investors are becoming keenly interested in how environmental obligations are managed, ongoing compliance assured and potential liabilities avoided.

For these reasons, Ontario Hydro's commitment to sustainable development practices has laid the foundation for the competitive success of its successor companies. Sustainable development – conducting business in a way that meets current needs without compromising the ability of future generations to meet theirs – is not so much a specific program as a way of thinking about three "bottom lines": financial, social and environmental.

The financial aspects of sustainable development activities in both successor companies focus on two major objectives: getting more value from environmental expenditures and reducing future environmental risks and liabilities through sound environmental management programs and, where necessary, remediation efforts. The social bottom line, on the other hand, drives us to earn the respect and loyalty of our customers, including those in the communities within which we operate. There are many ways in which this objective is pursued, principal of which is an honest and transparent disclosure of the environmental impacts of our operations. OPG, for example, will continue to consult with established environmental advisory groups around its major generating stations and is actively engaging the local community, as did Ontario Hydro, on how it can better respond to their needs.

Ontario Hydro's environmental performance commitments were embodied in the adoption of the ISO 14001 standards for Environmental Management Systems by all of the businesses within the corporation.

The following are some of the many sustainable-development-oriented projects completed during the past 15 months.

### Deer Lake Mini-Hydro

Deer Lake is one of the 23 communities served by OHSC's Remote Communities group. It is accessible only by air or winter road. Until recently, the community's electricity was supplied by three diesel generators. With the community load demand outstripping existing plant capability, Ontario Hydro Technologies installed two 245-kilowatt mini-hydroelectric generators at nearby Shoulderblade Falls. This project was partnered with the Remote Communities group, Deer Lake First Nation and the federal Department of Indian Affairs and Northern Development. This installation will provide nearly 90% of the community's power needs and significantly reduce dependence on diesel fuel.

### Emissions Reduction Trading

Since 1996, Ontario Hydro has participated with other industries, government and non-governmental organizations in the Pilot Emissions Reduction Trading (PERT) Project. The goal of the project, in which Ontario Hydro's successors will continue to participate, is to provide market incentives to improve environmental

**Ontario Hydro has helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.**

performance. By voluntarily investing in equipment and practices that reduce emissions, PERT member companies earn credits, which can be bought or sold, for each tonne of emissions reduced. In 1998, Ontario Hydro purchased credits from Beaver Fuels, enabling that company to sell cleaner gasoline without raising prices at the pump, and sold nitrogen oxide credits to the Hartford Steam Boiler Company in Connecticut. Ontario Hydro's participation in this innovative program helped reduce nitrogen oxide emissions in eastern North America, and its generation successor company will steadily add to that contribution.

### Restoring the Storm-Damaged Landscape

Thousands of trees in Eastern Ontario were killed by the January 1998 ice storm. Estimates placed tree damage as high as 70% in the Ottawa-Kingston corridor alone. To aid in environmental restoration, Ontario Hydro donated $50,000 to the Evergreen Foundation to fund a program enlisting volunteer support to plant new trees in the region. Three thousand trees – among them red maple, grey birch, green ash, white spruce, trembling aspen, white oak, white elm and linden – were distributed to 35 schools and 28 community groups.

## Human Resources/Health and Safety Performance

To meet the needs of the business, including the unique requirements of the nuclear recovery program and the challenges associated with the demerger of Ontario Hydro, Corporate Human Resources:

- redefined the business relationship with 95% of 21,000 employees and greatly improved operational flexibility by successfully negotiating separate collective agreements for each of the successor businesses;
- allocated approximately 21,000 employees and 15,000 pensioners to the successor companies without a single grievance;
- due to excellent cooperation with the unions, resolved a backlog of more than 3,100 grievances with as few as 10% being resolved by a third party;
- defined new organizational structures, responsibilities and accountabilities;
- introduced a new, contemporary Code of Business Conduct designed to reinforce the culture required of the companies in a competitive marketplace;
- introduced a new and integrated payroll system designed to contribute to improved productivity and ensure Year 2000 compliance;
- enhanced recruitment systems for new and existing skills;
- developed succession planning and executive development programs to ensure effective leadership and management capability in the future; and
- organized and administered Ontario Hydro's 10th annual Corporate Awards program to recognize and celebrate the excellence, ingenuity and capability of employees in the areas of customer service, safety, environmental sustainability, technology and innovation; the various projects saved the corporation over $154 million.

### Health and Safety

- The unfortunate death of an employee in a March 1999 motor vehicle accident was the corporation's first fatality since 1994.
- Although the number of days lost/charged per million hours worked (Accident Severity

Rate) was higher in 1998 than in 1997, this critical indicator of occupational health and safety has nevertheless improved by more than 200% over the last five years.
• The All Injury Frequency Rate, which tracks the number of incidents occurring within the corporation, improved in 1998.

## Ontario Hydro Technologies

Throughout 1998, Ontario Hydro Technologies (OHT) supported a wide range of specialized needs from Hydro's business units. OHT achieved ISO 9001 certification in 1998. In April 1999, OHT was renamed Ontario Power Technologies, a wholly owned subsidiary of Ontario Power Generation.

**Environmental Land Assessment:** OHT conducted a major soils testing program for OHSC, sampling nearly 1,000 transmission, distribution and microwave communication sites in the province, and conducted comprehensive testing through its analytical chemistry laboratory. This project was part of OHSC's Land Assessment and Remediation Program and was one of the largest programs of its kind ever conducted in Canada.

**Extensive assistance** was provided to generating station operations including:
• a comprehensive review and predictions of corrosion and deuterium uptake in operating pressure tubes for Nuclear;
• new methods for flaw assessment in fuel channels at Bruce B and assessments for Bruce, Darlington and Pickering;
• leak detection technologies for steam generators;
• seismic testing of Darlington components;
• outage support for ultrasonic inspection of steam generator tubes at nuclear stations;
• engineering support for nuclear maintenance operations;
• generator stator chemical cleaning at Pickering;
• flow-induced vibration analysis of Bruce B preheater tubes;
• accident/impact/handling analysis of radioactive waste transportation containers;
• emission characterization and consultation on stack sampling methods for Fossil; and
• penstock repairs at High Falls and specialized concrete services at Saunders G.S. for Hydroelectric.

**Strategic Research and Development** focused on three program areas: Customer Power, including energy efficiency and power quality enhancement; Smart Systems, including advanced system monitoring technologies; and Distributed Generation, such as fuel cells and micro turbines.

**Business Development:** With its strategic partner, Babcock & Wilcox, OHT launched a new applications company in March 1999 named Integran Technologies Inc. The new company will market an advanced materials technology developed at OHT in collaboration with researchers at the University of Toronto and Queen's University. Applications vary from improved lead acid batteries to wear-resistant materials coatings.

OHT successfully negotiated an exclusive licence agreement with Sumitomo Corporation for the commercialization in Japan of OHT's proprietary technologies for the destruction of PCBs in mineral oil and askarels, as well as for the decontamination of electrical equipment containing PCBs.

## Ready for Year 2000

Ontario Hydro's Year 2000 readiness program was always a top priority of the corporation since 1996, when it began. The scope of the program, which continues under the successor companies, includes all necessary remediation of computer-dependent systems, contingency planning and close cooperation with stakeholders and strategic partners. The Y2K team, at times more than 600 professionals, is working with a budget in excess of $100 million on the three-stage program.

**Stage One** – Operational Sustainability – included the analysis, remediation, testing and Y2K readiness certification of all critical systems. This stage had essentially been completed by year-end 1998. An independent assessment of the program early in 1999 confirmed its basic soundness.

**Stage Two** – Operational Readiness – tests how the individually certified systems work together. These large-scale integration tests have been successfully conducted at generation sites (Bruce nuclear site, two of four planned fossil generation sites, and at five of seven planned hydroelectric generation sites) as well as at a major representative grid location (a set of transformer stations in the Toronto area). Ontario Hydro and its successor companies have been working with the North American Electricity Reliability Council (NERC) to test interoperability within the continent's Eastern Interconnection, of which Ontario is a component. Also during this stage, which is expected to be completed by mid-1999, Ontario Hydro's successor companies will assess the Y2K readiness of external suppliers, direct customers, municipal electric utilities and independent power producer partners.

**Stage Three** – Event Readiness. Based on the findings in Stage Two, emergency response and preparedness plans will be developed to ensure safety and reliability across Ontario and to minimize the potential risk from external suppliers and from other external entities. Drills and event simulations will be conducted in cooperation with NERC, and Ontario Hydro's successor companies will work with provincial and municipal agencies to pre-establish responses to unplanned power interruptions. Plans will be put in place to operate the electricity system in a conservative, precautionary posture during the Year 2000 rollover. This stage will be completed by November 1999.

Throughout the entire program, Ontario Hydro shared information with other utilities and participated in cross-industry programs to identify common risks and help find solutions. Moreover, information on Y2K readiness progress is made available to customers and other stakeholders through frequent publications and on the OPG and OHSC websites.

As this overview shows, Ontario Hydro took all possible actions to ensure the reliability of Ontario's power system when the clock ticks over at the end of 1999. As a result of these precautions, which the successor companies are completing, the direct impact of this unique event in human history is expected to be manageable in Ontario.

# Financial Section


| | |
|---|---|
| Financial Review and Analysis | 30 |
| Management Report | 36 |
| Auditors' Report | 37 |
| Consolidated Statement of Operations and (Deficit) Retained Earnings | 38 |
| Consolidated Statement of Financial Position | 39 |
| Consolidated Statement of Cash Flows | 40 |
| Notes to Financial Statements | 42 |
| Five-Year Summary of Financial and Operating Statistics | 64 |

# Financial Review and Analysis

## FINANCIAL HIGHLIGHTS FOR THE THREE MONTHS ENDED MARCH 31, 1999

Ontario Hydro carried on business for the three months ended March 31, 1999, before operations were transferred to one of the successor entities upon the restructuring of the Corporation. During the three months, operations were typical compared to previous years' experiences, and were in accordance with plan. There were no significant, unforeseen events that affected the Corporation's operating results or financial position.

A summary of the financial highlights for the three months ended March 31, 1999, and March 31, 1998, is as follows:

| *(millions of dollars)* | MARCH 31 1999 | 1998 *(unaudited)* |
|---|---|---|
| Revenues | **2,594** | 2,484 |
| Costs | **1,463** | 1,250 |
| Financing charges | **687** | 734 |
| Net income | **444** | 500 |
| Cash provided from operations | **806** | 719 |
| Cash used for investing activities | **149** | 228 |
| Cash used for financing activities | **587** | 401 |
| Interest coverage | **1.66** | 1.71 |
| Debt ratio | **1.086** | 1.135 |

Net income for the first three months of 1999 was $444 million, down $56 million from 1998's first quarter. While revenue for the three months ended March 31, 1999, was $110 million higher and financing charges were $47 million lower, these were more than offset by a $213 million increase in costs.

Total revenue of $2,594 million for the first three months of 1999 is $110 million higher than revenue during the first quarter of 1998. Primary power and energy revenue of $2,511 million for the three months ended March 31, 1999, is $86 million higher than the $2,425 million revenue for the first three months of 1998. Energy sales increased in 1999 because warmer than usual weather conditions during the first quarter of 1998 lowered demand during that period.

Secondary power and energy revenue of $21 million for the three months ended March 31, 1999, is $16 million higher than the same period in 1998 because of increased energy sales outside the Province.

Other revenue of $62 million for the three months ended March 31, 1999, is $8 million higher than the $54 million for the first three months of 1998 because of a gain on investments.

Costs of $1,463 million for the three months ended March 31, 1999, are $213 million higher than the $1,250 million of costs for the first three months of 1998. The changes are as follows:

- $167 million increase in operation, maintenance & administration (OM&A) costs,
- $44 million increase in fuel used for electric generation,
- $17 million decrease in power purchased, and
- $19 million increase in depreciation and amortization.

OM&A costs are higher by $167 million for the three months ended March 31, 1999, compared to the same period in 1998. Significant variances are as follows:

- $50 million for repairs resulting from the 1998 ice storm, which were charged to the provision for future costs, lowered the costs charged to OM&A in 1998 compared to 1999,
- $30 million for increased integrated improvement program work in nuclear operations,
- $15 million preparing the Electricity Production, Merchant Function and Business Services groups to operate in the new business environment beginning April 1, 1999.

Included in OM&A costs for the three months ended March 31, 1999, is $37 million attributable to the final closing of Ontario Hydro's financial records, and a $23 million adjustment for obsolete nuclear materials inventory. This is dissimilar to March 31, 1998, because the prior year's first quarter results are on the basis of operations continuing as usual for the remainder of 1998.

The cost of $141 million for fuel used for electric generation during the first three months of 1999 is $44 million higher than the cost for the first three months of 1998, which is consistent with increased fossil generation and higher energy sales. Power

purchased costs are $17 million less for the three months ended March 31, 1999, compared to the same period last year, because some of the purchases during the first three months of 1999 supported the Nuclear Asset Optimization Plan (NAOP) and the costs were charged to the provision for future costs.

Depreciation costs of $402 million are $19 million higher for the three months ended March 31, 1999, compared to the same period in 1998, which is consistent with fixed assets in service being higher as at March 31, 1999.

Financing charges of $687 million decreased $47 million for the first three months of 1999 compared to the same period in 1998, because of lower debt outstanding and lower interest rates on refinancings.

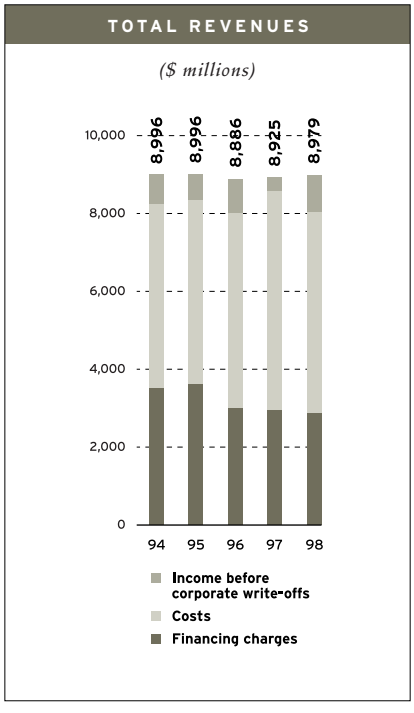
During the three months ended March 31, 1999, there was a $587 million reduction in debt compared to a $401 million reduction in the first quarter of 1998.

$149 million of cash from operations was invested in fixed and other assets during the three months ended March 31, 1999, compared to $228 million during the first quarter of 1998. Debt outstanding was reduced to $30,527 million as at March 31, 1999 from $31,221 million as at December 31, 1998.

### FINANCIAL HIGHLIGHTS FOR THE YEAR ENDED DECEMBER 31, 1998

Ontario Hydro's net income for 1998 was $1,831 million, compared with a net loss of $6,326 million in 1997. The results for the two years are not comparable due to the following significant items, which affected net income in each year. In 1997, the Board of Directors approved a number of charges and write-offs to current year's operations totaling $6,580 million, while in 1998 there were no write-offs. In 1998, there was a $887 million favourable adjustment to income to recognize the benefit associated with the Corporation having access to pension fund surplus. Access to the pension fund surplus arose as the result of changes included in the *Energy Competition Act, 1998*, enacted by the Government of Ontario (Government) in October 1998.

Ontario Hydro's 1998 income, before adjustment for the impact of the future employer pension contribution holidays, was $944 million. While this is $690 million higher than the corresponding figure for 1997, again, the results are not completely comparable because, in 1998, costs totaling $1,486 million were charged against a provision established at the end of 1997 for future costs, related principally to the nuclear recovery program, which could not be recovered through existing rates. In 1997, similar expenditures at a lower level were charged to operations.




Total revenues for 1998 were $8,979 million, $54 million higher than in 1997. This is the result of an $88 million increase in primary sales, partially offset by lower secondary sales and other revenues. Operating costs for 1998, excluding financing charges, amounted to $5,159 million, a decrease of $423 million from 1997. This reduction primarily reflects use of the 1997 provision for future costs. Financing charges of $2,876 million were $213 million lower than in 1997 mainly due to lower interest and foreign exchange costs.

Cash provided from operations decreased to $1,488 million in 1998 from $2,026 million in 1997. Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues,

a global market United States dollar bond issue, a global market Canadian dollar bond issue, a Canadian dollar Euro medium-term note issue, a private placement with the Province of Ontario (Province) and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper. In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared with $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared with $292 million in 1997.

Cash invested in fixed assets during 1998 was $823 million, compared with $881 million in 1997. Including changes in non-cash balances related to fixed assets, investment in fixed assets was $865 million in 1998 and $852 million in 1997.

## RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 1998

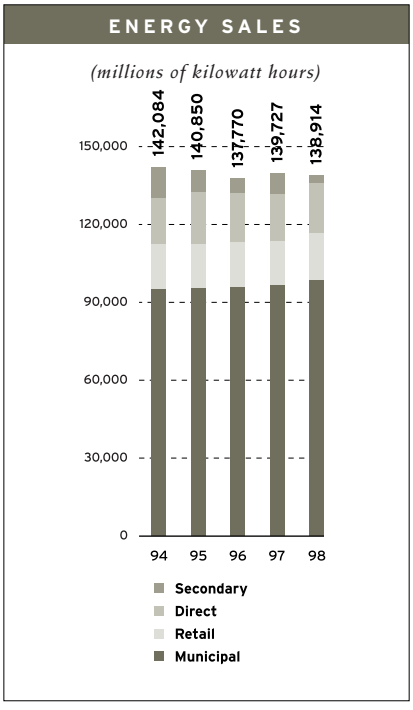
### REVENUES

#### Primary Revenues

Primary revenues for 1998 amounted to $8,524 million, an increase of $88 million over 1997. The increase reflects broadly based growth in demand in the municipal, commercial and industrial sectors. Demand was sufficiently robust to offset the impact of the January ice storm, negative winter weather effects due to El Niño, and strikes affecting two large industrial customers. Municipal sales revenues rose by $145 million or 2.5 per cent over 1997, primarily due to higher sales volumes from air conditioning load in the warmer summer months and an increased level of commercial activity. Sales to retail customers in 1998 fell by $50 million or 3.1 per cent, reflecting milder winter weather and the continuing impact of moving customers to lower rate classes, as well as a reduction in late payment and service charges. Sales to direct industrial customers remained fairly steady at $917 million, compared with $924 million in 1997.

#### Secondary Revenues

Secondary power and energy revenues, mainly from surplus energy exports to utilities in the United States, amounted to $148 million in 1998, a $25 million or 14.4 per cent decrease from 1997. The lower sales are primarily due to a lack of available generation as a result of the nuclear recovery program, partially offset by very favourable spot market prices during the June to September period due to tight supply conditions in the midwestern portion of the United States, and hotter than normal weather.



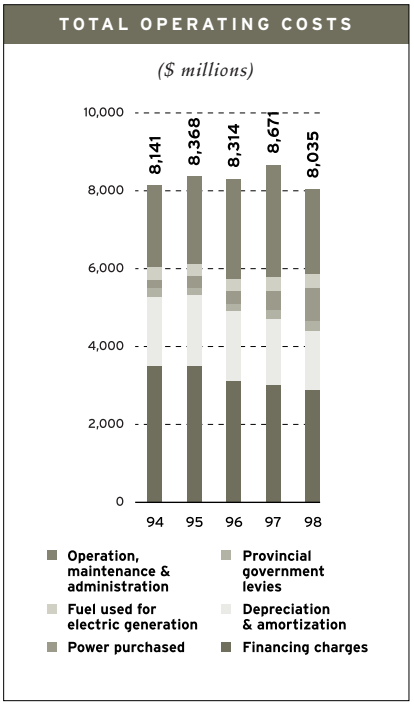

#### Other Revenues

Other revenues of $307 million in 1998 decreased by $9 million from 1997, due mainly to lower heavy water and isotope sales and a decrease in consulting revenues, partially offset by a gain on the sale of surplus land.

### COSTS

In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This provision included an allowance for additional fuel costs expected to be incurred by having to place greater reliance upon fossil generation and purchased power, as well as related financing costs. The provision is more fully described in note 7 to the 1998 Consolidated Financial Statements. In 1998, a total

of $1,486 million was charged to the provision for future costs. $1,231 million of this was related to the nuclear recovery program and the remainder was related to other costs.




Ontario Hydro's operating costs for 1998, excluding financing charges, totaled $5,159 million, $423 million lower than in 1997. This is primarily the result of the use in 1998 of the provision for future costs established at the end of 1997. Fixed operating costs of $4,662 million, consisting of provincial government levies, depreciation and amortization and financing charges, decreased by $282 million or 5.7 per cent from $4,944 million for 1997, mainly as a result of lower interest and foreign exchange costs.

### Operation, Maintenance and Administration

OM&A costs of $2,178 million for the year ended December 31, 1998, decreased by $13 million from 1997. As indicated earlier, this variance results principally from the fact that preliminary costs of the nuclear recovery program in 1997 were charged to operations. In 1998, OM&A costs of $589 million, relating mainly to the nuclear recovery program, were charged to the 1997 provision for future costs.

### Fuel Used For Electric Generation

The cost of fuel used for electric generation comprises the costs for coal, uranium, oil and water rental payments other than those made to the Province. The cost of fuel used for electric generation in 1998 was $350 million, a decrease of $347 million or 49.8 per cent from 1997, after charging $690 million in costs related to the replacement of nuclear production by higher-cost fossil production to the 1997 provision for future costs. Overall, internal generation in 1998 of 125,972 million kilowatt-hours was lower than generation in 1997 of 131,005 million kilowatt-hours, due to the nuclear recovery program. The shortfall in generation was compensated for by higher power purchases.

### Power Purchased

Electricity purchases in 1998 amounted to $845 million, an increase of $6 million over 1997, after charging $78 million in costs related to the replacement of nuclear production by increased power purchases to the 1997 provision for future costs. The amount of power purchased in 1998 amounted to 16,992 million kilowatt-hours compared to 13,750 million kilowatt-hours in 1997, an increase of 24 per cent. The increase reflects a rise in power purchases from utilities in Canada and the United States as a result of lower internal generation due to the nuclear recovery program, and an increase in contracted generation from independent power producers. Ontario Hydro also buys electricity when it is economical to do so, during periods of peak demand or in emergencies, and to manage acid gas emission levels.

### Provincial Government Levies

Provincial government levies totaled $274 million in 1998, a slight reduction from $277 million in 1997.

Ontario Hydro is required to pay to the Province an annual debt guarantee fee equal to one half of one per cent on the total debt guaranteed by the Province outstanding on the preceding December 31. The fee for 1998, based on guaranteed debt outstanding as at December 31, 1997, was relatively unchanged at $155 million compared with $156 million in 1997, as the year-over-year guaranteed debt level remained stable.

Provincial water rental payments, related to

Ontario Hydro's use of provincial waters in the operation of its hydroelectric stations, also remained relatively stable at $119 million in 1998 compared with $121 million in 1997.

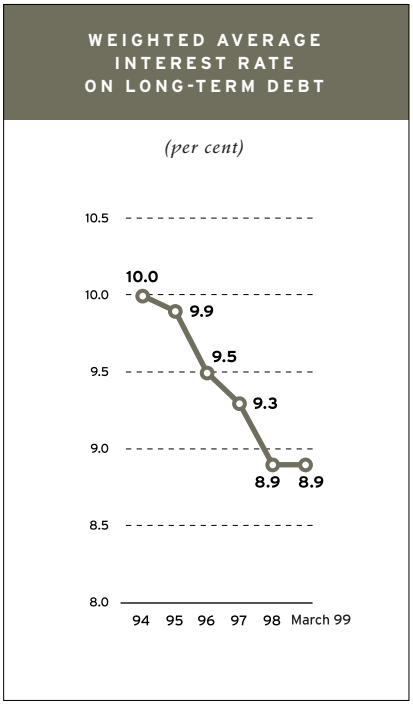
In 1998, Ontario Hydro paid approximately $224 million to various government agencies for provincial sales taxes, employment insurance premiums, Canada Pension Plan contributions, employer health tax payments and payments in lieu of realty taxes.

### Depreciation and Amortization

Depreciation and amortization charged to operations totaled $1,512 million in 1998, a decrease of $66 million or 4.2 per cent from 1997 mainly due to reversals in 1998 of decommissioning and rehabilitation provisions for certain generating stations. In 1998, depreciation and amortization of $83 million, relating to the nuclear recovery program, was charged to the 1997 provision for future costs.

### Financing Charges

Financing charges comprise interest charged to operations and foreign exchange costs. Interest charged to operations represents gross interest costs reduced by capitalized interest and interest earned on investments.




Foreign exchange costs comprise amounts related primarily to the amortization of exchange gains or losses on the principal amount of foreign debt and foreign exchange risk management activities.

Interest and foreign exchange charged to operations was $2,876 million in 1998, $213 million or 6.9 per cent lower than in 1997, after charging $46 million in interest costs related to the nuclear recovery program to the 1997 provision for future costs. Favourable impacts, due to a net reduction in the average level of long and short-term debt outstanding and a lower net weighted average interest rate on debt and accumulated provisions for fixed asset removal and used nuclear fuel disposal costs, were partially offset by an increase in the level of accrued provisions and a reduction in interest capitalized. Foreign exchange costs for 1998 decreased by $88 million, primarily due to favourable results from foreign exchange risk management activities.

### Financial Indicators

The Corporation's financial performance is monitored using two main indicators: interest coverage ratio and debt ratio.

The level of interest coverage measures the extent to which net income enables Ontario Hydro to meet its gross interest payments. An increase in the interest coverage ratio indicates a strengthening in the Corporation's financial condition. The 1998 level of interest coverage was 1.34 based on income before the deferred pension asset adjustment, compared to the 1997 interest coverage level of 1.09 based on income before corporate write-offs.

The debt ratio measures the extent to which Hydro's assets are financed by debt. A reduction in the debt ratio indicates a strengthening in financial position, as a relative increase in equity provides additional financial flexibility. The debt ratio at the end of 1998 was 1.100, compared to the 1997 ratio of 1.153. The improvement is due primarily to net income.

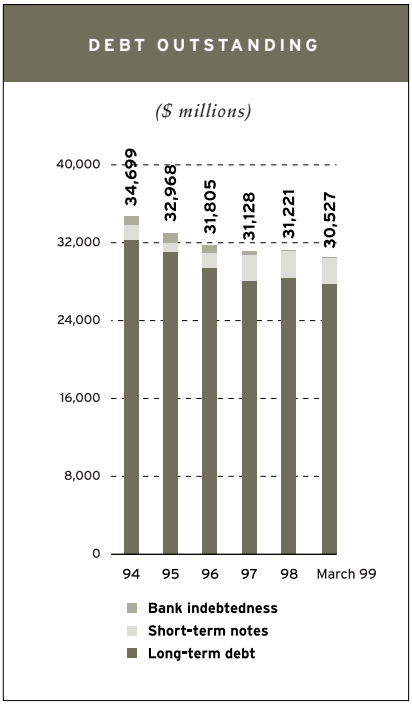
## FINANCING AND INVESTING ACTIVITIES

### Financing and Capital Markets

Ontario Hydro's cash from operations in 1998 was sufficient to cover capital expenditures for 1998 and

to reduce the level of outstanding debt. Gross borrowing was required primarily for refinancing maturing issues and taking advantage of opportunities to minimize interest expense.

In 1998, on a cash basis, there was a net debt reduction of $343 million, compared to a net debt reduction of $458 million in 1997.




Proceeds of $5,698 million were received from the issuance of debt for long-term financing in 1998, compared to $2,321 million in 1997. The 1998 proceeds include three Canadian dollar domestic issues totaling $675 million; a global market United States dollar bond issue of $750 million (Cdn. $1,092 million); a global market Canadian dollar bond issue of $1,350 million; a Canadian dollar Euro medium-term note issue of $250 million; a $500 million private placement with the Province; and the issuance of Canadian dollar short-term notes and United States dollar-denominated commercial paper.

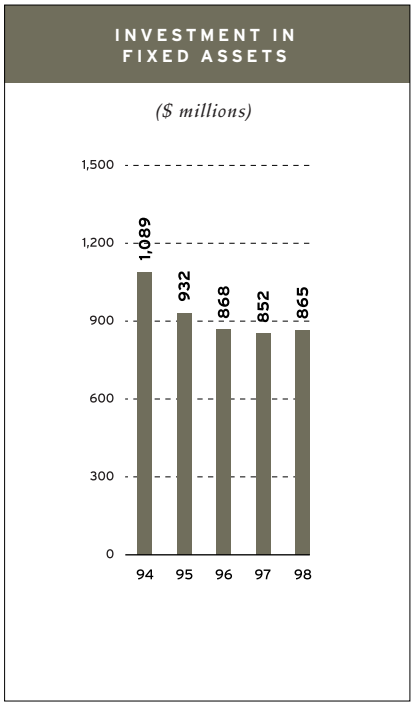
In 1998, $5,899 million of cash was used to retire debt issued for long-term financing, compared to $3,257 million in 1997. Cash paid on settlement of swaptions amounted to $142 million in 1998, compared to $292 million in 1997.

### Investment in Fixed Assets

Ontario Hydro invests in fixed assets to maintain service, reliability, safety and environmental performance and to meet regulatory requirements. The total assets of the Corporation at the end of 1998 were $40,023 million, 88 per cent of which represented fixed assets in service or under construction.

The cash required by Ontario Hydro, to finance its investment in fixed assets, has historically come from two major sources; operations and financing through borrowing. As was the case in 1997, sufficient cash was generated from operations in 1998 to finance investment in fixed assets.

Investment in fixed assets was $865 million in 1998 and $852 million in 1997. Of this total investment, $503 million (1997: $591 million) was spent on generating facilities and $362 million (1997: $261 million) was invested in major transmission and distribution facilities.



# Management Report

**MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING**

The accompanying financial statements of Ontario Hydro are the responsibility of management and have been prepared in accordance with accounting principles generally accepted in Canada, applied on a basis consistent with that of the preceding year. Ontario Hydro chooses accounting principles appropriate to its circumstances. The significant accounting policies followed by Ontario Hydro are described in the Summary of Significant Accounting Policies contained in note 2 to the financial statements. The preparation of financial statements necessarily involves the use of estimates based on management's judgement, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 23, 1999.

Management maintained a system of internal controls designed to provide reasonable assurance that the assets were safeguarded and that reliable financial information was available on a timely basis. The system included formal policies and procedures and an organizational structure that provided for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluated the effectiveness of these internal controls on an ongoing basis and reported its findings to management and the Audit Committee of the Ontario Hydro Board of Directors.

The financial statements have been examined by Ernst & Young LLP, independent external auditors appointed by the Lieutenant Governor in Council of Ontario. The external auditors' responsibility is to express their opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditors' Report, which appears below, outlines the scope of their examination and their opinion.

For the three months ended March 31, 1999 and year ended December 31, 1998, the Ontario Hydro Board of Directors, through the Audit Committee, was responsible for ensuring that management fulfilled its responsibilities for financial reporting and internal controls. The Audit Committee met periodically with management, the internal auditors and the external auditors to satisfy itself that each group had properly discharged its respective responsibility, and to review the financial statements before recommending approval by the Board of Directors. The external auditors had direct and full access to the Audit Committee, with and without the presence of management, to discuss their audit and their findings as to the integrity of Ontario Hydro's financial reporting and the effectiveness of the system of internal controls.

As at April 1, 1999, the Board of Directors of Ontario Hydro was dissolved and Ontario Hydro continues as the Ontario Electricity Financial Corporation (OEFC) with a new Board of Directors appointed pursuant to the *Electricity Act, 1998*.

On behalf of Ontario Hydro Management,

*President & Chief Executive Officer, Ontario Hydro, as at March 31, 1999*

*Chief Financial Officer, Ontario Hydro, as at March 31, 1999*

Toronto, Canada,
June 23, 1999

# Auditors' Report

**TO THE BOARD OF DIRECTORS OF ONTARIO ELECTRICITY FINANCIAL CORPORATION:**

We have audited the consolidated statement of financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the consolidated statements of operations and (deficit) retained earnings, and cash flows for the three months ended March 31, 1999 and year ended December 31, 1998. These financial statements are the responsibility of Ontario Hydro's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of Ontario Hydro as at March 31, 1999 and December 31, 1998, and the results of its operations and its cash flows for the three months ended March 31, 1999 and year ended December 31, 1998, in accordance with generally accepted accounting principles.

Ontario Hydro's accounting policies differ from those followed by enterprises that are not rate-regulated as described in note 2(a) to these financial statements.

*Chartered Accountants*

Toronto, Canada,
June 23, 1999

# Consolidated Statement of Operations and (Deficit) Retained Earnings

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy *(note 3)* | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **619** | 2,178 | 2,191 |
| Fuel used for electric generation | **141** | 350 | 697 |
| Power purchased | **232** | 845 | 839 |
| Provincial government levies *(note 4)* | **69** | 274 | 277 |
| Depreciation and amortization *(note 5)* | **402** | 1,512 | 1,578 |
| | **1,463** | 5,159 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **1,131** | 3,820 | 3,343 |
| Financing charges *(note 6)* | **687** | 2,876 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **444** | 944 | 254 |
| Corporate write-offs *(note 7)* | **–** | – | (6,580) |
| Deferred pension asset adjustment *(note 18)* | **–** | 887 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits *(note 16)* | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

*See accompanying notes to financial statements.*

# Consolidated Statement of Financial Position

*(millions of dollars)*

| ASSETS | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **FIXED ASSETS** *(note 8)* | | | |
| Fixed assets in service | **50,441** | 50,447 | 49,678 |
| Less accumulated depreciation | **16,473** | 16,158 | 14,934 |
| | **33,968** | 34,289 | 34,744 |
| Construction in progress | **1,107** | 1,023 | 1,248 |
| | **35,075** | 35,312 | 35,992 |
| **CURRENT ASSETS** | | | |
| Temporary investments | **245** | 225 | – |
| Accounts receivable | **1,106** | 1,113 | 1,104 |
| Fuel for electric generation *(note 10)* | **374** | 456 | 367 |
| Materials and supplies, at cost | **342** | 359 | 322 |
| | **2,067** | 2,153 | 1,793 |
| **OTHER ASSETS** | | | |
| Deferred debt costs | **1,176** | 1,267 | 971 |
| Deferred pension asset *(note 18)* | **972** | 979 | 112 |
| Long-term accounts receivable and other assets | **310** | 312 | 313 |
| | **2,458** | 2,558 | 1,396 |
| | **39,600** | 40,023 | 39,181 |
| **LIABILITIES** | | | |
| Long-term debt *(note 11)* | **26,194** | 25,856 | 24,920 |
| **CURRENT LIABILITIES** | | | |
| Bank indebtedness | **10** | 60 | 37 |
| Accounts payable and accrued charges | **1,315** | 1,255 | 1,233 |
| Short-term notes payable | **2,751** | 2,837 | 2,870 |
| Accrued interest | **744** | 687 | 725 |
| Long-term debt payable within one year *(note 11)* | **1,572** | 2,468 | 3,301 |
| | **6,392** | 7,307 | 8,166 |
| **OTHER LIABILITIES** | | | |
| Other post-employment benefits | **1,316** | 1,292 | 760 |
| Unamortized swaption premiums *(note 13)* | **11** | 21 | 92 |
| Long-term accounts payable and accrued charges | **593** | 608 | 548 |
| Accrued fixed asset removal and used nuclear fuel disposal costs *(note 14)* | **3,307** | 3,201 | 2,842 |
| Provision for future costs *(note 7)* | **4,525** | 4,904 | 6,390 |
| | **9,752** | 10,026 | 10,632 |
| **CONTINGENCIES & COMMITMENTS** *(notes 12 & 15)* | | | |
| **DEFICIENCY** | | | |
| Deficit *(note 16)* | **(2,738)** | (3,166) | (4,537) |
| | **39,600** | 40,023 | 39,181 |

*See accompanying notes to financial statements.*

# Consolidated Statement of Cash Flows

*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| Net income (loss) | **444** | 1,831 | (6,326) |
| Adjust for non-cash items | | | |
| Depreciation and amortization | **402** | 1,512 | 1,578 |
| Corporate write-offs | **–** | – | 6,580 |
| Deferred pension asset adjustment | **–** | (887) | – |
| Amortization of foreign exchange gains and losses | **25** | 113 | 125 |
| Provision for used nuclear fuel disposal costs | **23** | 52 | 55 |
| Interest on accrued provisions | **45** | 160 | 164 |
| Other | **12** | 96 | (34) |
| | **507** | 1,046 | 8,468 |
| | **951** | 2,877 | 2,142 |
| Provision for future costs | | | |
| Change in NAOP provision | **(326)** | (1,231) | – |
| Change in other provisions | **(53)** | (255) | – |
| | **(379)** | (1,486) | – |
| | **572** | 1,391 | 2,142 |
| Net change in non-cash balances related to operations *(note 17)* | **234** | 97 | (116) |
| | **806** | 1,488 | 2,026 |
| **INVESTING ACTIVITIES** | | | |
| Fixed assets | **(136)** | (865) | (852) |
| Other assets | **(13)** | (78) | (109) |
| | **(149)** | (943) | (961) |
| Change in cash position before financing activities | **657** | 545 | 1,065 |
| **FINANCING ACTIVITIES** | | | |
| Debt for long-term financing | | | |
| Issued | **1,000** | 5,698 | 2,321 |
| Retired | **(1,587)** | (5,899) | (3,257) |
| Net financing activities | **(587)** | (201) | (936) |
| Re-issuance of debt for long-term financing previously redeemed | **–** | – | 770 |
| Cash paid on settlement of swaptions | **–** | (142) | (292) |
| | **(587)** | (343) | (458) |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | **70** | 202 | 607 |
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **165** | (37) | (644) |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** *(note 9)* | **235** | 165 | (37) |

*See accompanying notes to financial statements.*

Signed only as to the year ended December 31, 1998,
on behalf of the Ontario Hydro Board of Directors

*Chairman*
Toronto, Canada, February 25, 1999

*President &*
*Chief Executive Officer*

Signed only as to the three months ended March 31, 1999,
on behalf of the Ontario Electricity Financial Corporation
Board of Directors

*Chair*
Toronto, Canada, June 23, 1999

*Vice-Chair*

# Supplementary Statement* – Restatement of Consolidated Statement of Operations and (Deficit) Retained Earnings

*(Isolating the effect of 1997 provision for future costs)*
*(millions of dollars)*

| | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Primary power and energy | | | |
| Municipal utilities | **1,790** | 6,019 | 5,874 |
| Retail customers | **456** | 1,588 | 1,638 |
| Direct industrial customers | **265** | 917 | 924 |
| | **2,511** | 8,524 | 8,436 |
| Secondary power and energy | **21** | 148 | 173 |
| Other revenues | **62** | 307 | 316 |
| | **2,594** | 8,979 | 8,925 |
| **COSTS** | | | |
| Operation, maintenance and administration | **763** | 2,767 | 2,191 |
| Fuel used for electric generation | **308** | 1,040 | 697 |
| Power purchased | **259** | 923 | 839 |
| Provincial government levies | **69** | 274 | 277 |
| Depreciation and amortization | **418** | 1,595 | 1,578 |
| | **1,817** | 6,599 | 5,582 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **777** | 2,380 | 3,343 |
| Financing charges | **712** | 2,922 | 3,089 |
| **INCOME BEFORE CORPORATE WRITE-OFFS, DEFERRED PENSION ASSET ADJUSTMENT AND TRANSFER TO 1997 PROVISION FOR FUTURE COSTS** | **65** | (542) | 254 |
| Corporate write-offs | | – | (6,580) |
| Deferred pension asset adjustment | **–** | 887 | – |
| Transfer to 1997 provision for future costs | **379** | 1,486 | – |
| **NET INCOME (LOSS)** | **444** | 1,831 | (6,326) |
| **OPENING (DEFICIT) RETAINED EARNINGS** | **(3,166)** | (4,537) | 2,552 |
| Other post-employment benefits | **–** | (460) | (763) |
| Net refunds on annexation by municipalities | **(16)** | – | – |
| **CLOSING DEFICIT** | **(2,738)** | (3,166) | (4,537) |

* In 1997, Ontario Hydro's Board of Directors used its rate-setting authority to establish a provision for future costs against which certain expenditures, primarily related to the nuclear recovery program, would be charged as incurred from 1998 to 2001. This Supplementary Statement isolates the effect upon the 1999 and 1998 results of operations of charging certain costs of the year to the 1997 provision for future costs.

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. RESTRUCTURING OF THE ONTARIO ELECTRICITY INDUSTRY AND EVENTS SUBSEQUENT TO MARCH 31, 1999

The North American electrical utility industry has undertaken initiatives to move away from traditional monopolies towards competitive models that are more conducive to customer choice. On October 30, 1998, the Government of Ontario (Government) enacted the *Energy Competition Act, 1998* (ECA) to restructure the Ontario electricity industry and introduce competition during the year 2000.

Prior to the restructuring, Ontario Hydro was a vertically integrated, rate-regulated electricity utility. On April 1, 1999, Ontario Hydro was restructured into a number of successor entities, as follows:

- Ontario Power Generation Inc. (OPG) is a generation company;
- Ontario Hydro Services Company Inc. (OHSC) is a regulated transmission and distribution business, and operates certain energy service businesses in an unregulated business environment;
- Independent Electricity Market Operator (IMO) is a non-profit corporation, which is the independent system co-ordinator responsible for directing system operations and operating the electricity market;
- Electrical Safety Authority (ESA) is a non-profit corporation, which will carry out electrical inspections previously conducted by Ontario Hydro; and
- Ontario Electricity Financial Corporation (OEFC) is the continued Ontario Hydro entity with the objectives of managing debt, administering assets, liabilities, rights and obligations not transferred to a successor entity, and acting as administrator of the existing pension plan until arrangements are completed to transfer assets and liabilities to the new pension plans of the successor entities.

On April 1, 1999, each successor entity acquired Ontario Hydro's respective business operations in exchange for debt and equity securities equal to the fair values. The fair values were based on the present value of expected future operating results. Ontario Hydro's debt remained with OEFC.

Stranded debt is defined as debt that the successor entities could not service as commercial entities in a competitive market. Stranded debt has been determined, on a preliminary basis, by assigning fair values to OPG, OHSC, and the IMO, and subtracting these values from Ontario Hydro's total debt and liabilities. Using this methodology, the stranded debt is estimated at $21 billion as per the Ministry of Finance announcement of April 1, 1999. The actual stranded debt will be known once a final determination can be made for other items; principally valuing power purchase obligations (note 15).

The government has identified that certain of the OEFC's revenue streams in the new electricity market (e.g. payments-in-lieu of corporate income and capital taxes made by the new restructured companies and local distribution utilities) will be dedicated to service stranded debt.

The Province of Ontario (Province) continues to guarantee all existing Ontario Hydro debt.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in Canada, applied on a basis consistent with that of the preceding year. The significant accounting policies followed by Ontario Hydro are described below.

### a) Rate setting

Up to March 31, 1999, Ontario Hydro had broad powers to generate, supply and deliver electric power

throughout the Province of Ontario. The Corporation operated under the *Power Corporation Act* (PCA) and was subject to the provisions of the *Ontario Energy Board Act*.

Under the provisions of the PCA, the price payable by municipal and other Ontario power customers was the cost of supplying the power. Such cost was defined in the PCA to include the cost of operating and maintaining the power system, the cost of energy conservation programs, depreciation, interest and the annual amounts for statutory debt retirement (SDR) and stabilization of rates and contingencies.

Under the provisions of the *Ontario Energy Board Act*, a public hearing before the Ontario Energy Board (OEB) was required to review any changes in electricity rates proposed by Ontario Hydro which affect its municipal utilities, direct industrial customers, or, if the Minister of Energy so directed, rural retail customers. The OEB tabled its recommendations with the Minister of Energy, Science and Technology. After considering the recommendations of the OEB, Ontario Hydro's Board of Directors, under the authority of the PCA, established the electricity rates to be charged to customers.

The Board of Directors may have specified for rate-setting purposes that an amount be included in the determination of the operating results of a period which differed from the period in which it would have been recognized under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment. If so, the accounting treatment given the amount was the same as its treatment for rate-setting purposes. This authority of the Board of Directors could have been used in respect of a specific transaction or an accounting policy.

Ontario Hydro's accounting policies relating to the deferral of discounts and premiums arising from the acquisition of debt prior to maturity and foreign exchange gains and losses on United States dollar-denominated short-term financing replacing United States dollar-denominated long-term debt ,which has been redeemed prior to maturity, reflected the rate-setting treatment of these items as specified by the Board of Directors. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these amounts would have been included as gains or losses of the current period (see note 2g).

In 1994, the Board of Directors used its rate-setting authority to specify that costs of the rehabilitation program for steam generators at Pickering A and B and Bruce A Nuclear Generating Stations be deferred for recovery in future periods. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment these costs would have been expensed as incurred.

In 1996, the Board of Directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997 to 2001 to operations in 1996. In 1997, as a result of the Nuclear Asset Optimization Plan (NAOP), which included the planned nuclear recovery expenditures, the Board of Directors used its rate-setting authority to specify that the incremental costs associated with improving nuclear performance, specifically NAOP and other related costs, to be incurred over the period 1998 to 2001, be charged to operations in 1997. This rate-setting treatment was selected to enable Ontario Hydro to meet its SDR requirement over the period 1998 to 2001. As a result of the Board's decision, the related costs were not recovered through rates and represented a loss which was provided for in 1997. Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred (see note 7).

The Board of Directors also used its rate-setting authority to specify that certain additional future costs be charged to operations in 1997 (see note 7). Under generally accepted accounting principles for enterprises operating in a non-rate-regulated environment, these costs would have been expensed as incurred.

### b) Consolidation

The consolidated financial statements include the financial statements of Ontario Hydro and its wholly-owned subsidiaries Ontario Hydro International Inc. (OHI Inc.) and Ontario Hydro Interconnected Markets

Inc. (OHIM Inc.). OHI Inc. was incorporated under the *Business Corporations Act* (Ontario) and was established as a subsidiary of Ontario Hydro in September 1993. OHIM Inc. was incorporated on July 9, 1996, under the *General Corporation Law* of the State of Delaware in the United States. Both OHI Inc. and OHIM Inc. publish separate financial statements.

### c) Fixed assets

Fixed assets in service include operating facilities, non-operating reserve facilities, and heavy water contained in nuclear generating stations. Construction in progress includes fixed assets under construction.

Fixed assets are capitalized at cost which comprises material, labour, engineering costs, overheads, depreciation on service equipment, interest applicable to capital construction activities, and for new facilities, the costs of training initial operating staff. In the case of generating facilities, the cost also includes the net cost of commissioning which comprises the cost of start-up less the value attributed to energy produced by generation facilities during their commissioning period. For multi-unit facilities, a proportionate share of the cost of common facilities is placed in service with each major operating unit. The cost of heavy water comprises the direct cost of production plus applicable overheads, as well as interest and depreciation on the heavy water production facilities and the estimated removal costs of these facilities. Leases which transfer the benefits and risks of ownership of assets to Ontario Hydro are capitalized.

Interest is capitalized on construction in progress at rates, which approximate the average cost of long-term debts, as follows:

| | |
|---|---|
| 1999 | 9.2% |
| 1998 | 9.4% |
| 1997 | 9.6% |

If the construction period of a project is extended and the construction activities are continued, interest is capitalized during the period of extension provided that the project has a reasonable expectation of being completed.

If a project is deferred as a result of a management decision and there is a reasonable expectation of completion, interest capitalization ceases and amortization for any loss in value commences.

If a project is cancelled or deferred indefinitely with a low probability of construction being resumed, all costs, including the costs of cancellation, are written off to operations.

If fixed assets are removed from operations and mothballed for future use, mothballing costs are charged to operations. These assets are classified as non-operating reserve facilities.

### d) Depreciation

The capital costs of fixed assets in service are depreciated on a straight-line basis. Depreciation rates for the various classes of assets are based on their estimated service lives. Major components of fossil and nuclear generating stations are depreciated over the lesser of the service life expectancy of the major component or the remaining service life of the associated generating station. Hydroelectric generating stations are assumed to have a perpetual life. Major components of hydroelectric generating stations are depreciated over the service life expectancy of the component, ranging from 25 to 100 years. Heavy water in nuclear generating stations is depreciated over the remaining service life of the associated station with the exception of heavy water in Pickering Nuclear Generating Station (NGS) A, which is depreciated to the year 2032, since this heavy water is planned to be used to maintain operating levels in the remaining nuclear plants once Pickering NGS A has completed its useful life. The estimated service lives of assets in the major classes are:

| | |
|---|---|
| Generating Stations | |
| fossil | 40 years |
| nuclear | 40 years |
| Transmission and distribution facilities | 10 to 100 years |
| Administration and service facilities | 5 to 50 years |

In accordance with group depreciation practices, the costs of normal fixed asset retirements are charged to accumulated depreciation. However, gains and losses on sales of fixed assets and losses on premature retirements are charged to operations as adjustments to depreciation expense.

When the net costs of removal of fixed assets can be reasonably estimated and are significant, provisions for these costs are charged to depreciation expense on an annuity basis prospectively over the remaining service life of the related fixed assets. Removal costs that are provided for include the estimated costs of decommissioning nuclear and fossil stations and the estimated costs of removing certain nuclear reactor fuel channels. Other removal costs are charged to depreciation expense as incurred.

The estimated service lives of fixed assets and the significant assumptions underlying the estimates of fixed asset removal costs are subject to periodic review. Any changes arising out of such a review are implemented on a remaining service life basis from the year the changes can first be reflected in electricity prices.

Non-operating reserve facilities are amortized so that any estimated loss in value during the non-operating period is charged to depreciation expense on a straight-line basis over their expected non-operating period.

#### e) Fuel for electric generation

Fuel used for electric generation comprises the average inventory costs of fuel consumed, less the value attributed to energy produced during the commissioning phase of placing a new or refurbished unit (i.e., after replacement of fuel channels or steam generators) in service, plus provisions for disposal of nuclear fuel used during the period. The cost of fuel inventory comprises fuel purchases, transportation and handling costs.

The provision for disposal of used nuclear fuel is charged to operations based on estimated future expenditures and interest accumulating to the estimated date of disposal. Effective January 1, 1998, estimates of disposal costs which do not vary with the amount of fuel to be disposed of ("fixed" disposal costs) are charged to operations on an annuity basis over the estimated service lives of the associated nuclear stations. Estimates of disposal costs which vary with the amount of fuel to be disposed of ("variable" disposal costs) are charged to operations based on the present value of the future estimated disposal costs attributable to the fuel bundles used in that period. Prior to 1998, nuclear fuel provisions were charged to operations based on the present value of the future estimated disposal costs, fixed and variable, attributable to the fuel bundles used in that period. The impact of this change is an increase in costs of approximately $83 million per year plus interest on the increase in accumulated provision.

Estimates of expenditures, interest and escalation rates, and the date of disposal are subject to periodic review. Adjustments resulting from changes in any of these factors are charged to operations on an annuity basis prospectively over the remaining years the nuclear units will be in operation.

#### f) Foreign currency translation

Current monetary assets and liabilities denominated in foreign currencies are translated to Canadian currency at year-end rates of exchange and the resulting exchange gains or losses are credited or charged to operations. Long-term debt payable in foreign currencies is translated to Canadian currency at year-end rates of exchange. Resulting unrealized exchange gains or losses are deferred and included in deferred debt costs, and are

amortized to operations on an annuity basis over the remaining life of the related debt.

Foreign exchange gains or losses on hedges of long-term debt payable in foreign currencies are deferred and included in deferred debt costs. The deferred gains or losses on hedges are amortized to operations on an annuity basis in the periods the hedges provide benefit.

Foreign exchange gains or losses on early redemption of long-term debt, including subsequent gains and losses on short-term replacement financing, are deferred and included in deferred debt costs if the exposure in the foreign currency related to the redeemed debt is continued by refinancing the redeemed debt in the same currency. These deferred gains or losses are amortized on an annuity basis over the period to the original maturity date of the redeemed debt (see note 2a).

If the foreign currency exposure is reduced as a result of the early redemption of debt, the resulting foreign exchange gains or losses related to the redeemed debt are credited or charged to operations.

#### g) Deferred debt costs

Deferred debt costs include the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of foreign currency long-term debt; deferred foreign exchange gains or losses on hedges; deferred foreign exchange gains or losses on the early redemption of long-term debt; discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity; discounts or premiums accrued on foreign currency hedges; and net unamortized premiums on settled, exercised or expired swaption contracts.

Discounts or premiums arising from the issuance of debt are amortized over the period to maturity of the debt on an annuity basis when the term of the debt exceeds one year and on a straight-line basis when the term is one year or less. Discounts or premiums on debt acquired prior to the date of maturity are amortized on an annuity basis over the period from the acquisition date to the original maturity date of the debt (see note 2a). Discounts or premiums on foreign currency hedges are credited or charged to operations on an annuity basis over the terms of the individual hedges. Net unamortized premiums on settled, exercised or expired swaption contracts are amortized on an annuity basis over the period from the settlement, exercise or expiry date to the original maturity date of the related debt.

#### h) Pension plan

The pension plan is a contributory, defined benefit plan covering all regular employees of Ontario Hydro. Pension costs for accounting purposes are actuarially determined using the projected benefit method prorated on services and based on assumptions that reflect management's best estimate of the effect of future events on the actuarial present value of accrued pension benefits. Pension plan assets are valued using current fair values and pension plan adjustments are amortized on a straight-line basis over the expected average remaining period of service of the employees covered by the Ontario Hydro pension plan (see note 18).

In the last quarter of 1998, Ontario Hydro adopted the new method of accounting for pension costs recently approved by the Canadian Institute of Chartered Accountants (CICA). The effect of this was to change the discount rate used to determine pension costs and obligations from a long-term average rate to a current market settlement rate. This change had no significant impact on the financial statements for the year ended December 31, 1998.

#### i) Other post-employment benefits

In addition to pension benefits, Ontario Hydro provides group life insurance and health-care benefits to its retired employees and, in certain cases, their surviving spouses and unmarried dependents. As well, Ontario Hydro provides long-term disability benefits to qualifying employees during extended absences from work due to sickness or injury.

Prior to January 1, 1997, the costs of other post-employment benefits (OPEB) were charged to operations

as the benefits were paid. Effective January 1, 1997, Ontario Hydro implemented accrual accounting for OPEB whereby the expected costs of providing those benefits are charged to operations as employees render services. Accordingly, the costs of OPEB are actuarially determined for accounting purposes based on assumptions that reflect management's best estimates of the effect of future events on the actuarial present value of the accrued benefits. The transition obligation arising on conversion to accrual accounting was charged to retained earnings on January 1, 1997 (see note 16). In 1998, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. The transition amount resulting from this change was charged to the deficit in 1998 (see note 16).

#### j) Research and development

Research and development (R&D) costs related directly to the design or construction of a specific fixed asset are capitalized as part of the cost of the asset. R&D costs incurred to discharge long-term obligations, and for which specific provision has already been made, are charged to the related provision. All other R&D costs are charged to operations in the year incurred.

#### k) Applications software and the Year 2000 expenditures

Ontario Hydro capitalizes major applications software acquisition costs when future benefit is reasonably assured. Expenditures incurred to address the Year 2000 Issue are charged to operations as incurred, unless existing assets are replaced with new versions or completely new systems. In this case, the expenditures are capitalized consistent with the accounting for any acquisition project.

### 3. SECONDARY POWER AND ENERGY

Secondary power and energy revenues include $10 million for the three months ended March 31, 1999 (1998: $111 million, 1997: $158 million) from sales of electricity to United States utilities.

### 4. PROVINCIAL GOVERNMENT LEVIES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Provincial water rentals | **30** | 119 | 121 |
| Provincial debt guarantee fee | **39** | 155 | 156 |
| | **69** | 274 | 277 |

Provincial water rentals are paid to the Province for the use of water for hydroelectric generation. The debt guarantee fee, equal to one half of one percent on the total debt guaranteed by the Province outstanding as of the preceding December 31, is a legislated payment made by Ontario Hydro to the Province.

### 5. DEPRECIATION AND AMORTIZATION

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Depreciation of fixed assets in service | **398** | 1,447 | 1,438 |
| Fixed asset removal costs | **4** | 65 | 140 |
| | **402** | 1,512 | 1,578 |

## 6. FINANCING CHARGES

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31, 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Interest on bonds, notes and other debt: | | | |
| Long-term | **611** | 2,603 | 2,778 |
| Short-term | **34** | 155 | 114 |
| Interest on accrued fixed asset removal and used nuclear fuel disposal costs | **45** | 160 | 164 |
| | **690** | 2,918 | 3,056 |
| **LESS:** | | | |
| Interest charged to: | | | |
| Construction in progress | **7** | 39 | 51 |
| Fuel for electric generation | **–** | – | 1 |
| Interest earned on investments | **14** | 33 | 33 |
| | **21** | 72 | 85 |
| Interest charged to operations | **669** | 2,846 | 2,971 |
| Foreign exchange | **18** | 30 | 118 |
| | **687** | 2,876 | 3,089 |

## 7. CORPORATE WRITE-OFFS

| *(millions of dollars)* | YEAR ENDED DECEMBER 31 1997 |
|---|---|
| Nuclear recovery | 4,595 |
| Other future expenditures | 1,495 |
| Staff reduction and employee relocation costs | 238 |
| Bruce Nuclear Generating Station A | 170 |
| Surplus buildings and equipment and associated business exit costs | 82 |
| | 6,580 |

There were no corporate write-offs during the three months ended March 31, 1999, and year ended December 31, 1998. In 1997, the Board of Directors of Ontario Hydro approved a number of charges and write-offs to operations, totalling $6,580 million, to 1997 operations. Two of these charges were for future costs expected to be incurred over the 1998 to 2001 period, which, under GAAP for enterprises operating in a non-rate-regulated environment, would be expensed as incurred. Accordingly, these charges required use of the Board's rate-setting authority, to establish a provision for future costs. The first such charge was for additional future costs associated with improving nuclear performance, specifically the Nuclear Asset Optimization Plan (NAOP) and other related costs such as replacement energy and interest. While Ontario Hydro expects to incur additional costs of $4,895 million for the improvement of nuclear performance, the charge to 1997 operations was $4,595 million, before using a $300 million provision made in a previous year for planned nuclear recovery expenditures. The second charge, of $1,495 million, was for additional future costs associated with transmission and distribution assets, nuclear decommissioning and used fuel disposal provisions.

The remaining $490 million in charges to 1997 operations did not require use of the Board's rate-setting authority and related to the following:

• A charge of $238 million to cover the costs associated with a targeted reduction of 850 staff, including those expected to become surplus to Corporate needs before the end of 1998, and costs associated with the large-scale staff relocations required under the NAOP.
• A write-off of $170 million in capital project expenditures associated with the three units of Bruce Nuclear Generating Station A that were laid-up in 1998. Management's assessment was that the related capital projects would have no future benefit due to the lengthy duration of the lay-up.
• A write-off of $82 million associated with certain buildings and equipment identified as surplus due to Hydro's transition towards a more competitive environment and to reflect the wind-up of several small ancillary business ventures.

The following table shows the extent to which the provision for future costs was used in 1998 and the three months ended March 31, 1999.

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 |
|---|---|---|
| Opening balance | **4,904** | 6,390 |
| Charges | | |
| Operation, maintenance and administration | **144** | 589 |
| Fuel used for electric generation | **167** | 690 |
| Power purchased | **27** | 78 |
| Depreciation and amortization | **16** | 83 |
| Financing charges | **25** | 46 |
| | **379** | 1,486 |
| **CLOSING BALANCE** | **4,525** | 4,904 |

## 8. FIXED ASSETS

| *(millions of dollars)* | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation | Cost | Accumulated Depreciation |
| Generating stations | | | | | | |
| Hydroelectric | **2,755** | **901** | 2,755 | 881 | 2,723 | 898 |
| Fossil | **5,462** | **2,896** | 5,457 | 2,854 | 5,377 | 2,658 |
| Nuclear | **24,868** | **6,984** | 24,850 | 6,792 | 24,591 | 6,082 |
| Heavy water | **3,946** | **986** | 3,946 | 961 | 3,946 | 863 |
| Transmission and distribution facilities | **11,493** | **3,674** | 11,525 | 3,615 | 11,252 | 3,094 |
| Administration and service facilities | **1,917** | **1,032** | 1,914 | 1,055 | 1,789 | 1,339 |
| **FIXED ASSETS IN SERVICE** | **50,441** | **16,473** | 50,447 | 16,158 | 49,678 | 14,934 |

### Nuclear steam generator rehabilitation costs

Ontario Hydro has undertaken a major program to rehabilitate steam generators at the Pickering A and B Nuclear Generating Stations. The costs of the program, which will continue until 2001, are being deferred and amortized over the remaining service lives of the individual generators commencing as each generator is returned to service.

The deferred nuclear steam generator rehabilitation amounts included in fixed assets, construction in progress and accumulated depreciation are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Fixed assets | **152** | 152 | 116 |
| Less: accumulated depreciation | **23** | 19 | 14 |
| | **129** | 133 | 102 |
| Construction in progress | **–** | – | 24 |
| | **129** | 133 | 126 |

## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of investments in money market instruments (temporary investments with original maturities of less than three months), and outstanding cheques (bank indebtedness). Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Temporary investments | **245** | 225 | – |
| Bank indebtedness | **(10)** | (60) | (37) |
| | **235** | 165 | (37) |

## 10. FUEL FOR ELECTRIC GENERATION

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **INVENTORIES** | | | |
| Uranium | **154** | 151 | 161 |
| Coal | **187** | 261 | 188 |
| Oil | **33** | 44 | 18 |
| | **374** | 456 | 367 |

## 11. LONG-TERM DEBT

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bonds and notes payable | **27,735** | 28,291 | 28,188 |
| Capital lease obligations | **31** | 33 | 33 |
| | **27,766** | 28,324 | 28,221 |
| Less: Payable within one year | **1,572** | 2,468 | 3,301 |
| | **26,194** | 25,856 | 24,920 |

Bonds and notes payable, are summarized by years of maturity in the following table:

| *(millions of dollars)* | AS AT MARCH 31 1999 | | | | AS AT DECEMBER 31 1998 | | | | 1997 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | | | Weighted Average Interest Rate | Principal Outstanding | Weighted Average Interest Rate |
| | CDN | FOREIGN | TOTAL | PERCENT | CDN | FOREIGN | TOTAL | PERCENT | TOTAL | PERCENT |
| **YEARS OF MATURITY** | | | | | | | | | | |
| | | | | | | | | | 3,297 | |
| 1 year | **1,150** | **419** | **1,569** | | 2,050 | 415 | 2,465 | | 2,504 | |
| 2 years | **2,077** | **153** | **2,230** | | 1,551 | – | 1,551 | | 1,552 | |
| 3 years | **2,000** | **755** | **2,755** | | 1,525 | 932 | 2,457 | | 2,426 | |
| 4 years | **3,097** | **–** | **3,097** | | 4,448 | – | 4,448 | | 4,447 | |
| 5 years | **1,148** | **64** | **1,212** | | 1,398 | – | 1,398 | | – | |
| **SUBTOTAL** | **9,472** | **1,391** | **10,863** | **9.2** | 10,972 | 1,347 | 12,319 | 9.1 | 14,226 | 8.9 |
| 6 – 10 years | **5,198** | **1,132** | **6,330** | **7.0** | 4,198 | 1,216 | 5,414 | 7.2 | 2,363 | 8.5 |
| 11 – 15 years | **2,164** | **1,132** | **3,296** | **9.9** | 2,164 | 1,148 | 3,312 | 9.9 | 3,219 | 10.6 |
| 16 – 20 years | **648** | **–** | **648** | **10.0** | 648 | – | 648 | 10.0 | 1,997 | 8.9 |
| 21 – 25 years | **3,633** | **–** | **3,633** | **10.0** | 3,633 | – | 3,633 | 10.0 | 2,675 | 10.3 |
| 26 years and over | **2,965** | **–** | **2,965** | **8.9** | 2,965 | – | 2,965 | 8.9 | 3,708 | 9.1 |
| | **24,080** | **3,655** | **27,735** | **8.9** | 24,580 | 3,711 | 28,291 | 8.9 | 28,188 | 9.3 |

The weighted average interest rate represents the effective rate of interest on fixed-rate bonds and notes and the current interest rate in effect at March 31, 1999, for floating-rate bonds and notes, all before considering the effect of derivative financial instruments used to manage interest rate risk. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province.

Bonds and notes payable include:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **BONDS AND NOTES PAYABLE** | | | |
| Ontario Hydro bonds [1] | | | |
| Canadian | **1,500** | 500 | – |
| US | **–** | – | 193 |
| Callable bonds [2] | | | |
| Canadian | **2,765** | 2,765 | 3,116 |
| US | **–** | – | 253 |
| Weighted average coupon rates | **11.5%** | 11.7% | 11.4% |

[1] These are held by the Province having terms identical with those of the Province of Ontario issues sold on behalf of Ontario Hydro.
[2] Bonds callable by Ontario Hydro are at fixed prices on dates before their stated maturities, which are over the period 2002 to 2012. These bonds are callable at a weighted average call price equal to 100% of the bond's principal amounts callable on specific dates within the period 1999 to 2005.

As described in note 12, Ontario Hydro has used various derivative financial instruments to hedge the foreign exchange exposure related to long-term debt denominated in foreign currencies and to manage the interest rate risk associated with its outstanding long-term debt.

### 12. DERIVATIVE FINANCIAL INSTRUMENTS

Ontario Hydro has used a variety of derivative financial instruments to manage foreign exchange and interest rate risk. The table below summarizes outstanding positions in foreign exchange derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Notional Principal Outstanding |
| **FORWARD EXCHANGE CONTRACTS** | | | | | | | |
| Purchased forward | – | – | – | US $95 | – | US $95 | US $1,242 |
| | CHF 7 | – | CHF 7 | CHF 10 | – | CHF 10 | CHF 11 |
| Sold forward | – | – | – | US $51 | – | US $51 | US $55 |
| **CROSS-CURRENCY SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives: | | | | | | | |
| United States dollar | US **$202** | US **$105** | US **$307** | US $202 | US $105 | US $307 | US $307 |
| Swiss franc | – | CHF **150** | CHF **150** | – | CHF 150 | CHF 150 | CHF 150 |
| Japanese yen | – | ¥ **5,000** | ¥ **5,000** | – | ¥ 5,000 | ¥ 5,000 | ¥ 5,000 |
| New Zealand dollar | – | – | – | – | – | – | NZ $100 |
| Australian dollar [1] | AU **$568** | – | AU **$568** | AU $568 | – | AU $568 | AU $568 |
| Canadian dollar | – | CDN **$423** | CDN **$423** | | CDN $423 | CDN $423 | CDN $423 |
| **ONTARIO HYDRO PAYS:** | | | | | | | |
| United States dollar | US **$441** | US **$363** | US **$804** | US $441 | US $363 | US $804 | US $873 |
| Australian dollar [1] | AU **$260** | – | AU **$260** | AU $260 | – | AU $260 | AU $260 |
| Canadian dollar | – | CDN **$279** | CDN **$279** | – | CDN $279 | CDN $279 | CDN $280 |

[1] Periodic swaps denominated in Japanese yen.

**FORWARD EXCHANGE CONTRACTS.** Ontario Hydro has entered into forward exchange contracts to hedge against the impact of a potential decline in the value of the Canadian dollar in 1999, and to manage the foreign exchange risk associated with its long-term debt. Forward exchange contracts have also been entered into to hedge firm commitments for future purchases and sales denominated in a foreign currency.

**CROSS CURRENCY SWAP CONTRACTS.** Ontario Hydro has entered into cross currency swap contracts to effectively convert principal and interest payments on selected debt issues into Canadian or United States dollars.

The following table summarizes the currencies in which Ontario Hydro's long-term debt, bank indebtedness and short-term notes are payable, before and after giving effect to Ontario Hydro's foreign exchange risk management activities related to debt:

| *(millions of dollars)* | MARCH 31 1999 | | DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Principal Outstanding | | Principal Outstanding | | Principal Outstanding | |
| | Before Hedging | After Hedging | Before Hedging | After Hedging | Before Hedging | After Hedging |
| Canadian dollars | **26,311** | **26,147** | 26,941 | 26,786 | 26,691 | 26,817 |
| United States dollars | **3,704** | **4,380** | 3,756 | 4,435 | 3,865 | 4,311 |
| Australian dollars [1] | **295** | **–** | 289 | – | 287 | – |
| Swiss francs | **153** | **–** | 167 | – | 147 | – |
| New Zealand dollars | **–** | **–** | – | – | 83 | – |
| Japanese yen | **64** | **–** | 68 | – | 55 | – |
| | **30,527** | **30,527** | 31,221 | 31,221 | 31,128 | 31,128 |

[1] Coupon payments denominated in Japanese yen.

### Interest rate risk management instruments

The following table summarizes outstanding positions in interest rate derivative financial instruments:

| *(millions of stated currency)* | MARCH 31 1999 | | | DECEMBER 31 1998 | | | 1997 |
|---|---|---|---|---|---|---|---|
| | Notional Principal Outstanding | | | Notional Principal Outstanding | | | Notional Principal Outstanding |
| | Maturing within 12 months | Maturing beyond 12 months | Total | Maturing within 12 months | Maturing beyond 12 months | Total | Total |
| **SWAPTION CONTRACTS SOLD** | | | | | | | |
| Ontario Hydro potentially | **–** | **CDN $496** | **CDN $496** | CDN $100 | CDN $496 | CDN $596 | CDN $692 |
| pays fixed | **–** | **–** | **–** | – | – | – | US $193 |
| **INTEREST RATE SWAP CONTRACTS** | | | | | | | |
| Ontario Hydro receives fixed | **CDN $765** | **CDN $1,648** | **CDN $2,413** | CDN $765 | CDN $1,648 | CDN $2,413 | CDN $3,591 |
| | **US $323** | **US $403** | **US $726** | US $323 | US $403 | US $726 | US $826 |
| Ontario Hydro pays fixed | **CDN $726** | **CDN $2,433** | **CDN $3,159** | CDN $2,576 | CDN $2,487 | CDN $5,063 | CDN $7,215 |
| | **US $466** | **US $613** | **US $1,079** | US $466 | US $613 | US $1,079 | US $1,893 |
| **FORWARD RATE AGREEMENTS** | | | | | | | |
| Ontario Hydro pays forward rate | **–** | **–** | **–** | – | – | – | CDN $450 |
| | **–** | **–** | **–** | US $175 | – | US $175 | US $850 |
| **BOND OPTIONS PURCHASED** | **–** | **–** | **–** | – | – | – | CDN $150 |
| | **–** | **–** | **–** | – | – | – | US $105 |
| Forward bond purchases | **–** | **–** | **–** | CDN $160 | – | CDN $160 | – |

**SWAPTION CONTRACTS.** In 1993, Ontario Hydro converted future potential interest savings, related to call options embedded in certain of its bonds to cash by selling offsetting swaption contracts. These contracts permit holders to require Ontario Hydro to enter into interest rate swaps commencing on the call date. If exercised, the swaptions result in Ontario Hydro making payments based on a fixed interest rate equal to the related bonds' coupon rates, and receiving floating rate payments.

United States dollar-denominated swaptions may be cash settled on their exercise dates. Premiums received from the sale of these contracts are being amortized to income, as a reduction of interest expense, over the remaining terms of the related bond issues.

**INTEREST RATE SWAP CONTRACTS.** As at March 31, 1999, the outstanding receive-fixed interest rate swap contracts have effectively converted fixed interest rates on long-term debt to floating interest rates. These contracts have maturity dates over the period 1999 to 2026 (1998: 1999 to 2026; 1997: 1998 to 2026). The outstanding pay-fixed interest rate swap contracts have effectively converted floating interest rates on outstanding debt into fixed interest rates. These contracts have maturity dates over the period 1999 to 2027 (1998: 1999 to 2027; 1997: 1998 to 2027).

**FORWARD RATE AGREEMENTS.** Prior to 1999, Ontario Hydro had entered into forward rate agreements to manage its exposure to short-term interest rates.

**BOND OPTIONS.** Prior to 1999, Ontario Hydro had purchased options to buy long-term government bonds to mitigate the adverse impact of a potential decline in long-term interest rates on its fixed-rate debt.

**FORWARD BOND PURCHASES.** Prior to 1999, Ontario Hydro had entered into forward purchase contracts for Government of Canada bonds to manage its exposure to short-term interest rates.

The following table summarizes the total amount of long-term debt, short-term notes and bank indebtedness maturing or subject to interest rate resetting within one year and after one year, before and after giving effect to Ontario Hydro's interest rate risk management activities:

*(millions of dollars)*

| | AS AT MARCH 31, 1999 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | **4,334** | **6.2** | **3,232** | **6.3** |
| After one year | **26,193** | **9.1** | **27,295** | **9.3** |
| | **30,527** | **8.7** | **30,527** | **8.9** |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1998 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 5,365 | 5.8 | 4,273 | 5.8 |
| After one year | 25,856 | 9.1 | 26,948 | 9.2 |
| | 31,221 | 8.5 | 31,221 | 8.7 |

*(millions of dollars)*

| | AS AT DECEMBER 31, 1997 | | | |
|---|---|---|---|---|
| | Before interest rate risk management activities | Weighted average interest rate (percent) | After interest rate risk management activities | Weighted average interest rate (percent) |
| **MATURES OR REPRICES:** | | | | |
| Within one year | 7,104 | 5.8 | 3,619 | 6.6 |
| After one year | 24,024 | 9.6 | 27,509 | 9.0 |
| | 31,128 | 8.7 | 31,128 | 8.7 |

## 13. FAIR VALUE OF FINANCIAL INSTRUMENTS AND CREDIT RISK

### Fair value

The following table presents the carrying amounts and fair values of Ontario Hydro's financial instruments:

*(millions of dollars)*

| | AS AT MARCH 31 1999 | | AS AT DECEMBER 31 1998 | | 1997 | |
|---|---|---|---|---|---|---|
| | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] | Carrying Value | Fair Value[1] |
| **FINANCIAL ASSETS** | | | | | | |
| Forward exchange contracts | – | – | – | – | 53 | 55 |
| Cross currency swap contracts | 69 | 79 | 93 | 116 | 53 | 55 |
| Interest rate swap contracts | 33 | 222 | 25 | 258 | 33 | 238 |
| Bond options | – | – | – | – | – | 1 |
| **FINANCIAL LIABILITIES** | | | | | | |
| Forward exchange contracts | – | 1 | 1 | 1 | – | – |
| Long-term debt | 27,735 | 34,062 | 28,291 | 35,073 | 28,188 | 34,700 |
| Swaption contracts | 11 | 63 | 21 | 97 | 92 | 245 |
| Cross currency swap contracts | 197 | 131 | 224 | 193 | 188 | 129 |
| Interest rate swap contracts | 98 | 458 | 94 | 503 | 111 | 428 |
| Forward rate agreements | – | – | – | 1 | – | 1 |

1 Period-end and year-end quoted market prices for specific or similar instruments are used to estimate the fair value of each class of financial instrument for which it is practical to estimate that value. For over-the-counter derivative financial instruments, the fair value is determined using pricing models that take into account the current value of the underlying instruments, the time value of money, and mid-market yield curve and volatility factors. The carrying values of cash, temporary investments, accounts receivable, bank indebtedness, short-term notes payable and accounts payable and accrued charges approximate fair value because of the short maturity of those instruments.

### Credit risk

Financial assets expose Ontario Hydro to credit risk and concentration of credit risk. As at March 31, 1999, there were no significant concentrations of credit risk with respect to any class of financial assets. Derivative financial instruments expose Ontario Hydro to credit risk, since there is a risk of counter party default. This risk is limited to the cost of replacing contracts in which Ontario Hydro has an unrealized gain.

Credit risk is monitored and minimized by dealing only with a diverse group of highly rated counter parties. In addition, as a means of further reducing its credit exposure on derivative financial instruments, Ontario Hydro enters into master netting agreements with its counter parties to enable it to settle derivative financial

assets and liabilities with the counter party on a net basis in the event that the counter party defaults. The existence of these master netting agreements had the effect of reducing Ontario Hydro's current credit risk exposure on derivative financial assets from $437 million to $86 million as at March 31, 1999 (1998: from $374 million to $152 million; 1997: from $349 million to $142 million).

## 14. ACCRUED FIXED ASSET REMOVAL AND USED NUCLEAR FUEL DISPOSAL COSTS

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| **ACCRUED FIXED ASSET REMOVAL COSTS** | | | |
| Accrued decommissioning costs | **1,059** | 1,042 | 962 |
| Accrued fuel channel removal costs | **699** | 674 | 616 |
| | **1,758** | 1,716 | 1,578 |
| **ACCRUED USED NUCLEAR FUEL DISPOSAL COSTS** | **1,549** | 1,485 | 1,264 |
| | **3,307** | **3,201** | 2,842 |

### Accrued fixed asset removal costs

Accrued fixed asset removal costs are the costs of decommissioning nuclear and fossil generating stations and heavy water production facilities after the end of their service lives, and the costs of removing certain fuel channels and steam generators, which are expected to be replaced during the life of the nuclear reactors. The significant assumptions used in estimating future fixed asset removal costs are consistent with 1998:

• decommissioning of nuclear generating stations in the 2042 to 2071 period on a deferred dismantlement basis (dismantlement following storage with surveillance for a 30-year period after shutdown of the reactors), and an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;

• interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

• removal and replacement of certain fuel channels and steam generators in nuclear generating stations during the following periods :

| | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Bruce A Units 3 & 4 | **2001–2008** | 2006–2008 | 2005–2008 |
| Pickering B | **2008–2012** | 2009–2014 | 2013–2017 |
| Bruce B | **2010–2013** | 2011–2017 | 2015–2018 |
| Darlington | **2016-2019** | 2016-2022 | 2022-2024 |

• decommissioning of fossil generating stations in the 2006 to 2025 period.

The significant assumptions underlying the estimates of accrued fixed asset removal costs are subject to periodic review. These assumptions, as well as, the existing methods and technology used for decommissioning, fuel channel removal and replacement, and steam generator replacement are subject to change which could result in changes to these costs.

### Accrued used nuclear fuel disposal costs

The significant assumptions used in estimating the future used nuclear fuel disposal costs are consistent with 1998:

- an in-service date of the year 2025 for permanent disposal facilities;
- an average transportation distance of 1,000 kilometres from nuclear generating facilities to disposal facilities;
- interest and cost escalation rates through to 2071 ranging from:

| | 1999 | 1998 | 1997 |
|---|---|---|---|
| Interest rates | **6% to 8%** | 6% to 8% | 6% to 9% |
| Cost escalation rates | **2% to 4%** | 2% to 4% | 2% to 5% |

The significant assumptions underlying the estimates of accrued used nuclear fuel disposal costs are subject to periodic review. These assumptions, as well as the existing methods and technology used for used fuel disposal, are subject to change which could result in changes to these costs.

## 15. CONTINGENCIES & COMMITMENTS

### Uncertainty due to the Year 2000 Issue

The Year 2000 Issue arises because many computerized systems use two digits rather than four to identify a year. Date-sensitive systems may recognize the year 2000 as 1900 or some other date, resulting in errors when information using year 2000 dates is processed. In addition, similar problems may arise in 1999 in some systems which use the digits "99" in a date field to represent something other than a date. The effects of the Year 2000 Issue may be experienced before, on, or after January 1, 2000, and, if not addressed, the impact on operations and financial reporting may range from minor errors to significant systems failure which could affect an entity's ability to conduct normal business operations.

The Corporation is in the process of completing a significant program designed to upgrade or replace affected systems on which it and its customers depend, prior to the year 2000. However, it is not possible to be certain that all aspects of the Year 2000 Issue affecting Ontario Hydro, including those related to the efforts of customers, suppliers, or other third parties, will be fully resolved.

### Renewable Energy Technology Program Class Action

In 1997, a class action suit was commenced on behalf of all bidders in the renewable energy technology program based on allegations of misrepresentation and bad faith in requesting bids and carrying on discussions with bidders prior to cancellation of the project. The plaintiffs named Ontario Hydro, as well as, certain individual officers of Ontario Hydro as defendants. The plaintiffs seek declaratory relief and damages in the amount of $250 million for loss of income and profits, loss of opportunity, conversion of trade secrets, and exemplary, aggravated and punitive damages. A motion to certify the class was argued in November 1998 and in December the Court refused to certify the action. Subject to appeal rights, the action may now proceed as a claim by the named plaintiff, and the damages claimed would be reduced substantially. At this time, the outcome of this claim is not determinable, and as such, no provision has been accrued in Ontario Hydro's financial statements with respect to any amounts in dispute. However, Ontario Hydro believes it has no liability, and that the damages claimed are, in any event, excessive.

### Municipal electric utilities' lawsuit

On April 24, 1997, three municipal electric utilities (Applicants) issued a notice of application against Ontario Hydro for which they have since received certification as a class proceeding on behalf of all municipal electric

utilities in Ontario. No supporting affidavit materials have been served. The Applicants seek declarations that certain rates and pricing options offered by Ontario Hydro to corporations contravene the provisions of the PCA and that these rates and pricing options have improperly increased costs to the municipal electric utilities who purchase their power from Ontario Hydro. They also seek recovery of these increased costs in the amount of $145 million. They further seek a declaration that Ontario Hydro has improperly diverted, from revenues derived from the sale of power to municipal electric utilities, monies, of an indeterminate amount, which should have been used to reduce the cost of power being supplied to these municipal electric utilities. They are also seeking declarations that Ontario Hydro has breached legislative provisions prescribing the operation of the Reserve for Stabilization of Rates and Contingencies and the equity account, and an order requiring Ontario Hydro to replenish the equity account in the amount of $5.0 billion. Ontario Hydro has denied the allegations, and believes that it has valid and meritorious defences against such allegations and will, in due course, file responding materials. At this time, the outcome of these claims is not determinable.

### Bruce Nuclear Generating Station A

As a result of the NAOP, Ontario Hydro laid up the three operating units at Bruce Nuclear Generating Station A over the Spring of 1998. Consistent with the phased recovery approach adopted for NAOP, these three units plus Bruce A Unit 2, which was shut down in 1995, are currently planned to be returned to service within the period 2003 to 2009.

In the event that a future decision is made not to return the four Bruce A units to service, a loss would have to be recognized. The current estimate of such a loss is about $1,050 million, which takes into account the undepreciated book value of the generating and heavy water assets, the carrying value of remaining construction in progress amounts, and the impact of recognizing unaccrued net fixed asset removal provisions.

### Power Purchase Agreements

Ontario Hydro has committed to the purchase of a portion of its electricity requirements, pursuant to long-term contractual Power Purchase Agreements (PPAs), with various power producers.

The PPAs expire on various dates from 1999 to 2048. Other details are:

| | AS AT MARCH 31 | AS AT DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| In-service capacity *(megawatts)* | **1,670** | 1,864 | 1,584 |
| Net present value of purchase obligations over 20 years *(millions of dollars)* | **6,689** | 6,910 | 6,203 |

Estimated annual payments for purchase obligations range from $755 million to $865 million over the next five years.

Deliveries in the aggregate for the first three months of 1999 account for approximately 8.0% of Ontario Hydro's total electric energy requirements (1998: 7.6%; 1997: 7.2%). The amount of energy received and the total payments made under these agreements are:

| | THREE MONTHS ENDED MARCH 31 | YEAR ENDED DECEMBER 31 | |
|---|---|---|---|
| | 1999 | 1998 | 1997 |
| Gigawatthours received | **3,043** | 11,108 | 10,366 |
| Power purchases *(millions of dollars)* | **217** | 680 | 642 |

Ontario Hydro has issued a Request for Expressions of Interest for the financial restructuring of its power purchase contracts with independent power producers in Ontario.

### Loan guarantees

Ontario Hydro is contingently liable under guarantees given to third-party lenders who have provided long-term financing to certain independent power producers. These guarantees total approximately $157 million as at March 31, 1999 (1998: $160 million, 1997: $171 million).

### Fuel used for electric generation

Ontario Hydro has entered into firm fuel supply agreements, some of which extend beyond 2000. The future obligation as at March 31, 1999, under these agreements for the remainder of 1999 is estimated to be $504 million. Beyond 1999, the estimated amount is $228 million (1998: $639 million).

## 16. (DEFICIT) RETAINED EARNINGS

On January 1, 1997, the opening retained earnings balance of $2,552 million was reduced by $763 million as a result of charging the transition obligation associated with the change in accounting for other post-employment benefits (see note 2i). The change was introduced as a first step to the early implementation of accounting recommendations from the Canadian Institute of Chartered Accountants (CICA), effective January 1, 2000. The future OPEB obligation was discounted using a long-term average rate, consistent with the rate used to determine pension costs and obligations.

In 1998, the CICA approved new recommendations on accounting for employees' future benefits. To complete the implementation of the new accounting recommendations, the Corporation changed the discount rate used to measure the OPEB obligation from a long-term average rate to a current market settlement rate. As a result, a transition amount of $460 million was charged to the deficit in 1998.

## 17. CONSOLIDATED STATEMENT OF CASH FLOWS

The changes in non-cash balances related to operations consisted of the following:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Accounts receivable – decrease (increase) | **7** | (9) | (22) |
| Fuel for electric generation, materials and supplies – decrease (increase) | **99** | (126) | (10) |
| Accounts payable and accrued charges – increase | **47** | 68 | 200 |
| Accrued interest – increase (decrease) | **57** | (38) | (47) |
| Long-term accounts payable and accrued charges – increase (decrease) | **24** | 202 | (237) |
| | **234** | 97 | (116) |
| Interest paid | **606** | 2,772 | 2,903 |
| Interest received | **9** | 29 | 14 |

## 18. BENEFIT PLANS

### Pension plan

Effective November 7, 1998, certain sections of the *Energy Competition Act, 1998,* came into force whereby Ontario Hydro and its successor entities were allowed to adopt funding practices that are more consistent with Canadian business practices. The Plan has a substantial surplus. As agreed in the Union negotiation processes,

Ontario Hydro ceased remitting employer contributions effective April 1, 1998. Also, commencing November 7, 1998, the direct costs of investment management and administration of the Plan have been absorbed as a cost of the Plan. Information about Ontario Hydro's pension plan is as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Pension costs | **7** | 23 | 116 |
| Pension costs charged to operations | **7** | 18 | 93 |
| Pension costs capitalized as part of fixed assets | **–** | 5 | 23 |
| Pension fund assets at fair market value | **10,853** | 10,816 | 10,173 |
| Accrued pension benefits at actuarial present value | **9,830** | 9,707 | 6,455 |
| Plan surplus for accounting purposes | **1,023** | 1,109 | 3,718 |
| Deferred pension asset | **972** | 979 | 112 |
| Expected return on plan assets | **7.25%** | 9% | 9% |
| Rate used to discount future pension benefits | **6%** | 6% | 8.25% |
| Salary schedule escalation rate | **3.5%** | 3.5% | 3.5% |
| Rate of cost of living increases to pensions | **2.5%** | 2.5% | 1.88% |
| Average remaining service life for employee *(years)* | **12** | 12 | 14 |

The actuarial present value of the accrued pension benefits was based on a projection of the valuation at December 31, 1997. Estimated accrued pension benefits increased dramatically in 1998 as a result of an accounting change. The Canadian Institute of Chartered Accountants has recommended that the rate used for discounting future pension benefits should be based on the current market interest rate. Previously, Ontario Hydro used its best estimate as to the long-term average interest rate of corporate bonds for this computation.

The deferred pension asset of $972 million as at March 31, 1999 (1998: $979 million, 1997: $112 million), represents the cumulative difference between funding contributions and pension costs. The $7 million decline to March 31, 1999, is the pension cost charged to operations. The $887 million increase to the deferred pension asset in 1998 results from recognizing the access to the pension fund surplus. Ontario Hydro also recognized a corresponding credit to the 1998 operating statement.

The $51 million difference as at March 31, 1999 (1998: $130 million), between the $1,023 million pension fund surplus and the $972 million deferred pension asset represents experience gains and losses, which will be amortized over the average remaining service period of employees.

The Ontario Electricity Pension Services Corporation was established effective April 1, 1999, to assume transitional responsibility, as an agent for OEFC, for administering the pension benefits and investing pension assets on behalf of the successor entities of Ontario Hydro.

### Group life insurance, health care plans, and other post-employment benefits

Ontario Hydro's costs are detailed as follows:

| *(millions of dollars)* | THREE MONTHS ENDED MARCH 31 1999 | YEAR ENDED DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Group life insurance premiums basic coverage | **1** | 5 | 4 |
| Health-care plan | **13** | 60 | 58 |
| Post-employment benefits | | | |
| Retiree group life insurance & health-care | **26** | 92 | 71 |
| Long-term disability | **10** | 32 | 17 |

Group life premiums for additional coverage, if requested, are remitted by the employee. In certain cases, retiree group life insurance and health care costs include payments for surviving spouses, as well as unmarried dependents. Long-term disability applies to qualifying employees in extended absence from work due to sickness or injury.

### 19. RESEARCH AND DEVELOPMENT

Research and development costs are detailed as follows:

| *(millions of dollars)* | AS AT MARCH 31 1999 | AS AT DECEMBER 31 1998 | 1997 |
|---|---|---|---|
| Charged to operations | **18** | 58 | 80 |
| Capitalized | **–** | 3 | 2 |
| Charged to accrued provisions | **2** | 7 | 19 |
| | **20** | 68 | 101 |

### 20. FEDERAL ENVIRONMENTAL REVIEW PANEL

On March 13, 1998, a Federal Government Panel issued its report (known as the Seaborn Report) on Atomic Energy of Canada Limited's concept for nuclear waste disposal. On December 3, 1998, the Federal Government responded to the Panel's recommendations, concurring with the Panel's major recommendations that:

- the search for a specific disposal site not proceed at this time because broad public support has not been demonstrated;
- a separately incorporated waste management organization be formed by waste producers to manage used fuel;
- a segregated fund be established; and
- a study of alternatives for long-term disposal be commissioned.

The Federal Government has defined the parameters within which each of these recommendations will be implemented, and has charged Natural Resources Canada with initiating and reporting back on a consultative process with the appropriate stakeholders to develop options to meet the key objectives of :

- establishing a dedicated fund;
- specifying the reporting relationships between the government, the waste management organization and stakeholders; and
- establishing a federal review and approval mechanism to provide oversight and access to funds.

Note 14 outlines Ontario Hydro's estimation of future costs and timing of used nuclear fuel disposals.

### 21. SEGMENT INFORMATION

Ontario Hydro's reportable electricity segments are generation (Generation); transmission, distribution and other electricity services (Distribution); and all other activities (Other). The reportable segments are strategic business units that produce or deliver the same product to the customer. The production of the product is managed separately from the transmission and distribution of the product. The accounting policies followed by the segments are the same as those described in the summary of significant accounting policies (see note 2).

Ontario Hydro accounts for intersegment sales and transfers at cost. These segments are confirmed by the Government of Ontario through its passage of the *Energy Competition Act, 1998,* which establishes five successor entities as described in Note 1.

*(millions of dollars)*

MARCH 31, 1999

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | **1,758** | **817** | **19** | **2,594** |
| Intersegment revenue | **264** | **31** | **–** | **295** |
| Depreciation and amortization | **338** | **76** | **4** | **418** |
| Operation, maintenance & administration | **551** | **185** | **27** | **763** |
| Segment profit before use of 1997 provision for future costs | **(64)** | **151** | **(22)** | **65** |
| Use of 1997 provision for future costs | **365** | **14** | **–** | **379** |
| Segment profit | **301** | **165** | **(22)** | **444** |
| Segment assets | **30,204** | **9,203** | **193** | **39,600** |

*(millions of dollars)*

DECEMBER 31, 1998

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,879 | 2,896 | 204 | 8,979 |
| Intersegment revenue | 1,159 | 127 | – | 1,286 |
| Depreciation and amortization | 1,267 | 304 | 24 | 1,595 |
| Operation, maintenance & administration | 1,861 | 676 | 230 | 2,767 |
| Segment profit before deferred pension asset adjustment and use of 1997 provision for future costs | (824) | 364 | (82) | (542) |
| Use of 1997 provision for future costs | 1,389 | 96 | 1 | 1,486 |
| Segment profit before deferred pension asset adjustment | 563 | 462 | (81) | 944 |
| Segment assets | 30,412 | 9,436 | 175 | 40,023 |

*(millions of dollars)*

DECEMBER 31, 1997

| | Generation | Distribution | Other | Total Company |
|---|---|---|---|---|
| Revenue from external customers | 5,990 | 2,809 | 126 | 8,925 |
| Intersegment revenue | 1,225 | 127 | – | 1,352 |
| Depreciation and amortization | 1,263 | 282 | 33 | 1,578 |
| Operation, maintenance & administration | 1,418 | 570 | 203 | 2,191 |
| Segment profit before corporate write-offs | (45) | 295 | 4 | 254 |
| Segment assets | 29,947 | 9,059 | 175 | 39,181 |

Reconciliation of reportable segment revenues, segment profit and segment assets

| *(millions of dollars)* | THREE MONTHS MARCH 31, 1999 | TWELVE MONTHS 1998 | 1997 |
|---|---|---|---|
| **REVENUES** | | | |
| Total revenues for reportable segments | **2,870** | 10,061 | 10,151 |
| Other revenues | **19** | 204 | 126 |
| Elimination of intersegment revenues | **(295)** | (1,286) | (1,352) |
| Total company revenues | **2,594** | 8,979 | 8,925 |
| **PROFIT** | | | |
| Total profit for reportable segments, before deferred pension asset adjustment | **444** | 944 | 254 |
| **ASSETS** | | | |
| Total assets for reportable segments | **39,407** | 39,848 | 39,006 |
| Other assets | **193** | 175 | 175 |
| Company total | **39,600** | 40,023 | 39,181 |

## 22. COMPARATIVE FIGURES

Certain of the 1998 and 1997 comparative figures in the financial statements have been reclassified to conform with the March 31, 1999, financial statement presentation.

# Five-Year Summary of Financial and Operating Statistics

*(millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6,019** | 5,874 | 5,857 | 5,899 | 5,829 |
| Retail customers | **1,588** | 1,638 | 1,647 | 1,635 | 1,688 |
| Direct industrial customers | **917** | 924 | 903 | 914 | 866 |
| | **8,524** | 8,436 | 8,407 | 8,448 | 8,383 |
| Secondary power and energy | **148** | 173 | 172 | 233 | 349 |
| Other revenues | **307** | 316 | 307 | 315 | 264 |
| | **8,979** | 8,925 | 8,886 | 8,996 | 8,996 |
| **COSTS** | | | | | |
| Operation, maintenance and administration[1] | **2,178** | 2,191 | 2,008 | 1,916 | 1,913 |
| Fuel used for electric generation[1] | **350** | 697 | 615 | 607 | 608 |
| Power purchased | **845** | 839 | 571 | 495 | 341 |
| Provincial government levies | **274** | 277 | 282 | 283 | 284 |
| Depreciation and amortization | **1,512** | 1,578 | 1,656 | 1,640 | 1,595 |
| | **5,159** | 5,582 | 5,132 | 4,941 | 4,741 |
| **INCOME BEFORE FINANCING CHARGES, CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **3,820** | 3,343 | 3,754 | 4,055 | 4,255 |
| **FINANCING CHARGES** | | | | | |
| Gross interest | **2,918** | 3,056 | 3,206 | 3,574 | 3,544 |
| Capitalized interest | **(39)** | (52) | (54) | (78) | (123) |
| Investment income | **(33)** | (33) | (52) | (123) | (63) |
| Foreign exchange | **30** | 118 | 82 | 54 | 42 |
| | **2,876** | 3,089 | 3,182 | 3,427 | 3,400 |
| **INCOME BEFORE CORPORATE WRITE-OFFS AND DEFERRED PENSION ASSET ADJUSTMENT** | **944** | 254 | 572 | 628 | 855 |
| Corporate write-offs | **–** | (6,580) | (2,560) | – | (268) |
| Deferred pension asset adjustment | **887** | – | – | – | – |
| **NET INCOME (LOSS)** | **1,831** | (6,326) | (1,988) | 628 | 587 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **FINANCIAL POSITION** | | | | | |
| Total assets | **40,023** | 39,181 | 39,870 | 42,984 | 44,100 |
| Fixed assets | **35,312** | 35,992 | 36,818 | 39,299 | 39,907 |
| Long-term debt [2] | **28,324** | 28,221 | 30,070 | 31,430 | 32,967 |
| (Deficit) retained earnings | **(3,166)** | (4,537) | 2,552 | 4,540 | 3,912 |
| **CASH FLOWS** | | | | | |
| Cash provided from operating activities | **1,488** | 2,026 | 2,228 | 2,479 | 2,256 |
| Cash used for financing activities | **343** | 458 | 1,533 | 1,686 | 1,245 |
| Cash used for investment in fixed assets | **823** | 881 | 844 | 881 | 1,164 |
| Investment in fixed assets | **865** | 852 | 868 | 932 | 1,089 |
| **FINANCIAL INDICATORS** | | | | | |
| Interest coverage before corporate write-offs and deferred pension asset adjustment [3] | **1.34** | 1.09 | 1.19 | 1.19 | 1.25 |
| Debt ratio [4] | **1.100** | 1.153 | 0.930 | 0.886 | 0.904 |
| **ENERGY SALES** [5] *millions of kilowatt-hours* | | | | | |
| Primary energy sales | | | | | |
| Municipal utilities | **98,289** | 95,276 | 94,565 | 94,606 | 93,405 |
| Retail customers | **18,383** | 18,846 | 18,603 | 18,390 | 18,499 |
| Direct industrial customers | **19,200** | 19,209 | 18,490 | 18,651 | 17,552 |
| | **135,872** | 133,331 | 131,658 | 131,647 | 129,456 |
| Secondary energy sales [5] | **3,042** | 6,396 | 6,112 | 9,203 | 12,628 |
| | **138,914** | 139,727 | 137,770 | 140,850 | 142,084 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **ENERGY AND DEMAND** | | | | | |
| In-service capacity *megawatts* [6] | **26,861** | 30,284 | 29,844 | 29,244 | 30,135 |
| December primary peak demand *megawatts* | **22,067** | 21,494 | 20,895 | 22,613 | 21,849 |
| Primary energy made available *millions of kilowatt-hours* [7] | **139,931** | 138,371 | 137,418 | 137,038 | 134,874 |
| **NUMBER OF PRIMARY CUSTOMERS** [5] | | | | | |
| Municipal utilities | **275** | 305 | 306 | 306 | 306 |
| Retail customers | **961,260** | 973,547 | 963,043 | 962,426 | 954,502 |
| Direct industrial customers | **108** | 108 | 103 | 103 | 103 |
| **AVERAGE REVENUE** [5] *in cents per kilowatt-hour of total energy sales* | | | | | |
| Primary power and energy | | | | | |
| Municipal utilities | **6.124** | 6.165 | 6.194 | 6.235 | 6.241 |
| Retail customers | **8.662** | 9.396 | 9.431 | 9.376 | 9.684 |
| Direct industrial customers | **4.774** | 4.810 | 4.884 | 4.901 | 4.934 |
| All primary customers combined | **6.273** | 6.395 | 6.441 | 6.464 | 6.529 |
| Secondary power and energy | **6.155** | 2.705 | 2.814 | 2.532 | 2.764 |
| All classifications combined | **6.271** | 6.224 | 6.279 | 6.205 | 6.192 |
| **AVERAGE RATE INCREASES (DECREASES)** *expressed as a per cent* | | | | | |
| Municipal utilities | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 |
| Retail customers | **0.0** | 0.0 | (0.6) | 0.0 | 0.0 |
| Direct industrial customers | **0.0** | 0.0 | (0.2) | (0.7) | 0.0 |
| All primary customers combined | **0.0** | 0.0 | (0.1) | (0.1) | 0.0 |

# Five-Year Summary of Financial and Operating Statistics

*continued (millions of dollars)*

| | 1998 | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **AVERAGE COST** [1,5,8] *in cents per kilowatt-hour of energy generated* | | | | | |
| Hydroelectric | | | | | |
| Operation, maintenance and administration | **0.402** | 0.318 | 0.312 | 0.316 | 0.318 |
| Water rentals | **0.404** | 0.362 | 0.335 | 0.344 | 0.336 |
| Depreciation, debt guarantee fee and financing charges | **0.294** | 0.274 | 0.313 | 0.415 | 0.543 |
| Other revenues | **(0.002)** | (0.003) | (0.006) | (0.003) | (0.011) |
| | **1.098** | 0.951 | 0.954 | 1.072 | 1.186 |
| Nuclear | | | | | |
| Operation, maintenance and administration | **2.151** | 1.533 | 1.228 | 1.066 | 1.032 |
| Uranium | **0.436** | 0.277 | 0.255 | 0.268 | 0.285 |
| Depreciation, debt guarantee fee and financing charges | **5.203** | 4.526 | 4.143 | 3.946 | 3.530 |
| Other revenues | **(0.069)** | (0.098) | (0.118) | (0.103) | (0.118) |
| | **7.721** | 6.238 | 5.508 | 5.177 | 4.729 |
| Fossil | | | | | |
| Operation, maintenance and administration | **0.917** | 0.905 | 1.051 | 1.166 | 1.331 |
| Coal, gas and oil | **2.225** | 2.113 | 2.218 | 2.394 | 2.378 |
| Depreciation, debt guarantee fee and financing charges | **1.169** | 1.860 | 2.496 | 3.229 | 3.732 |
| Other revenues | **(0.018)** | (0.023) | (0.073) | (0.121) | (0.020) |
| | **4.293** | 4.855 | 5.692 | 6.668 | 7.421 |
| **AVERAGE NUMBER OF EMPLOYEES** | | | | | |
| Regular | **20,875** | 21,130 | 21,313 | 21,505 | 22,525 |
| Non-regular [9] | **2,089** | 2,438 | 1,873 | 1,573 | 2,082 |

1 Operation, maintenance and administration and fuel costs have been restated to exclude other revenues.
2 Long-term debt includes long-term debt payable within one year.
3 Interest coverage represents net income plus interest on bonds, notes, and other debt divided by interest on bonds, notes and other debt.
4 Debt ratio represents debt (bonds and notes payable, short-term notes payable, other post-employment benefits, other long-term debt, unamortized swaption premiums, accrued fixed asset removal and used nuclear fuel disposal costs and bank lines of credit less unamortized foreign exchange gains and losses) divided by debt plus equity.
5 Figures for 1998 are preliminary.
6 In-service capacity represents the net output power supplied by all generating units, net firm power purchase contracts and purchases from non-utility generators. Excluded are non-operating reserve facilities of: 1998 – 5,100 MW; 1997 – 4,516 MW; 1996 – 4,300 MW; 1995 – 5,043 MW; and 1994 – 4,297 MW.
7 Primary energy made available represents primary energy sales plus transmission losses and energy used for heavy water production and generation projects.
8 Average cost per kilowatt-hour represents the costs attributable to generation but excludes the costs related to transmission, distribution and corporate administrative activities. These figures reflect the historical accounting costs of operating facilities and the actual energy generated by these facilities during the year.
9 The majority of non-regular staff are construction trades persons.

# Customers Served by Ontario Hydro and Associated Municipal Utilities

| | 1998[1] | 1997 | 1996 | 1995 | 1994 |
|---|---|---|---|---|---|
| **TOTAL NUMBER OF CUSTOMERS** *in thousands* | | | | | |
| Residential | **3,466** | 3,420 | 3,369 | 3,329 | 3,293 |
| Farm | **98** | 100 | 101 | 103 | 103 |
| Commercial and industrial | **441** | 441 | 439 | 441 | 437 |
| | **4,005** | 3,961 | 3,909 | 3,873 | 3,833 |
| **AVERAGE ANNUAL USE** *in kilowatt-hours per customer* | | | | | |
| Residential | **9,761** | 10,394 | 10,318 | 10,421 | 10,763 |
| Farm | **23,126** | 23,048 | 23,933 | 22,432 | 23,138 |
| Commercial and industrial | **210,570** | 210,114 | 204,103 | 205,123 | 201,265 |
| **AVERAGE REVENUE**[2] *in cents per kilowatt-hour* | | | | | |
| Residential | **8.65** | 8.51 | 8.87 | 8.84 | 8.83 |
| Farm | **8.77** | 8.81 | 9.33 | 8.96 | 8.93 |
| Commercial and industrial | **6.41** | 6.53 | 6.54 | 6.80 | 6.75 |
| All customers | **7.04** | 7.10 | 7.23 | 7.27 | 7.37 |

1 Figures are preliminary.
2 Includes rural rate assistance.

# Corporate Governance Practices

Under the *Power Corporation Act (PCA)*, Ontario Hydro was governed by a Board of Directors consisting of up to 22 members. Included in this membership was the Deputy Minister of Energy, Science and Technology, a Director who did not vote at any meeting of the Board. The Chairman and Directors of the Board were appointed by the Lieutenant Governor in Council, and the President was appointed by the Board. The Board of Directors recommended to the Government of Ontario that it appoint either the Chairman or the President as the Chief Executive Officer. In 1998 and the first quarter of 1999, Ontario Hydro had a 12-member Board. Ten of the Corporation's 12 directors were independent of management. External Board members were provided the opportunity to meet in executive session with the Chairman, and the Chief Executive Officer, during each Board meeting, and to meet in executive session without the Chief Executive Officer and members of management several times during the year and/or as required.

As stipulated in the *PCA* [Section 4(1)], the Board supervised management who managed the affairs of the Corporation, and it was consequently involved in considering significant issues facing the Corporation. The Chairman of the Board and the Chairs of the Board Committees, in working with management, determined which matters were put before the Board.

The Hydro Board also recognized that it may supervise, direct or oversee the business and affairs of the Corporation, but that it should not manage them, at least not in a day-to-day sense. This kind of management was delegated to the CEO and other senior Hydro officers, who were accountable to, and reported back to, the Board from time to time and who operated within prescribed limits of authority.

The Board of Directors discharged its responsibilities directly and through committees. While there were 12 meetings of the Board of Directors in 1998 – including three site visits of Bruce, Pickering and Darlington nuclear generating facilities – and three Board meetings in the first quarter of 1999, the number of Committee meetings varied. The following is a brief description of the mandate of each Board Committee, its composition, and the number of meetings held in the past year.

### AUDIT/FINANCE COMMITTEE

The mandate of the Audit/Finance Committee was to advise the Board and to make recommendations for its consideration with respect to: the review of financial reporting matters, the system of internal accounting and financial controls and procedure, and the audit procedures and audit plans; the nomination, remuneration, function and performance of the external auditors; the form and content of the Corporation's annual financial statements, the annual report and any interim or ad hoc documents required by regulatory authorities; the review, on an annual basis, of the financial plans and objectives of the Corporation; the review of matters relating to the funding and investment of funds of the Corporation's pension plan; an annual review of the risks inherent in the Corporation's business and related risk-management programs; the Corporation's policies with respect to debt management, money market activities and the Corporation's banking resolutions; and the Corporation's policies with respect to debt management, foreign exchange management and corporate financial investments.

As defined in the *PCA*, the President and CEO was a member of the Committee for that section of the mandate related specifically to financial matters.

In carrying out its responsibilities, the Committee could meet with both the external and internal auditors, without the Chief Executive Officer and members of management present.

The Audit/Finance Committee met nine times during 1998, and three times in the first quarter of 1999.

### ENVIRONMENT & PUBLIC POLICY COMMITTEE

The mandate of the Environment and Public Policy Committee was to advise the Board and to make recommendations for its consideration with respect to the Corporation's strategic focus and direction on

matters relating to: health and safety; social obligations; relations with Aboriginal peoples; and sustainable development and the environment. Specifically, the Committee ensured that the Corporation's actions reflected the interests of governments, non-governmental organizations, the people of Ontario and the employees of Ontario Hydro.

The Environment and Public Policy Committee met five times during 1998.

### HUMAN RESOURCES & CORPORATE GOVERNANCE COMMITTEE

The mandate of the Human Resources & Corporate Governance Committee was to advise the Board and to make recommendations for its consideration with respect to: the strategic prospects and options for the future of Ontario's electric power industry in general, and Ontario Hydro specifically; the review of written objectives of the CEO and the provision of guidance for the development and placement, including promotion, of senior management; the annual review and assessment of the performances of the Chairman and the President & CEO; the annual review of organizational structure matters; the monitoring of the quality of the relationship between management and the Board; and the responsibility for Board governance of the Corporation, including the mandate to review the Board Committee structure and to undertake such other initiatives as required to ensure the Board has exemplary corporate governance.

The Human Resources & Corporate Governance Committee met nine times in 1998, and twice in the first quarter of 1999.

### NUCLEAR REVIEW COMMITTEE

The mandate of the Nuclear Review Committee was to advise the Board and make recommendations for its consideration with respect to the safe performance of the Corporation's nuclear operations and its effectiveness in achieving desired results. Specifically, the Committee ensured that Ontario Hydro's nuclear facilities were operated and maintained in a rigorous and vigilant manner to ensure that the radiological risk to workers, the public and the environment is acceptably low, and in keeping with the best practices in the international nuclear community.

The Nuclear Review Committee met 12 times during 1998, and twice in the first quarter of 1999.

# Board of Directors

*as at March 31, 1999*

**SEATED (LEFT TO RIGHT)**

**RADCLIFFE LATIMER**
*Former Chairman of the Board, Prudential Corporation Canada*

**NUALA BECK**
*President, Nuala Beck & Associates Inc.*

**CARL ANDERSON**
*Alternating Chair, North York Hydro-Electric Commission*

**STANDING (LEFT TO RIGHT)**

**DONA HARVEY**
*Management Consultant, The Talaria Group*

**DR. MOHAN MATHUR**
*Dean, Faculty of Engineering Science, University of Western Ontario*

**RONALD W. OSBORNE**[1]
*President & Chief Executive Officer, Ontario Hydro*

**SIR GRAHAM DAY**
*Counsel to the Atlantic Canada Law Firm, Stewart McKelvey Stirling Scales*

**WILLIAM A. FARLINGER**[1]
*Chairman, Board of Directors, Ontario Hydro*

**KENNETH KNOX**[2]
*Deputy Minister of Energy, Science and Technology, Province of Ontario*

**JOHN D. MURPHY**[1]
*President, Power Workers' Union, Ontario Hydro*

**DOUG McCAIG**
*Former Chairman, Municipal Electric Association*

**JAMES R. BULLOCK**[1]
*President and Chief Executive Officer, Laidlaw Inc.*

**ABSENT**

**ARTHUR SAWCHUK**
*Chairman, The Manufacturers Life Insurance Company; President & Chief Executive Officer, Avenor Inc.*

**DAVID KERR**[1]
*Vice-Chairman, Board of Directors, Ontario Hydro; Chairman & Chief Executive Officer, Noranda Inc.*

[1] *Member of the Audit/ Finance Committee*
[2] *Non-voting member*

# Organization and Corporate Officers

*as at March 31, 1999*

**WILLIAM FARLINGER**
*Chairman*

**RON OSBORNE**
*President and Chief Executive Officer*

**G. CARL ANDOGNINI**
*Executive Vice-President and Chief Nuclear Officer, Ontario Hydro Nuclear*

**DEV CHOPRA**
*Vice-President, Finance – Nuclear*

**BRIAN DEBS**
*Vice-President, Human Resources – Nuclear*

**RICHARD MACHON**
*Nuclear Chief Operating Officer*

**BRIAN MacTAVISH**
*Vice-President, Regulatory Affairs – Nuclear*

**ROBERT MORRISON**
*Vice-President, Managed Systems – Nuclear*

**KEN NASH**
*Vice-President, Nuclear Waste Management and Technology*

**ROBERT NIXON**
*Site Vice-President, Bruce*

**CHARLES PACKER**
*Site Vice-President, Darlington*

**WARREN PEABODY**
*Vice-President and Chief Nuclear Engineer, Station Engineering and Support*

**GENE PRESTON**
*Senior Vice-President, NAOP and Pickering*

**PAUL SPEKKENS**
*Vice-President, Technical Support – Nuclear*

**CAROLYN STOCK**
*Executive Advisor, Ombudsman – Nuclear*

**BOB STRICKERT**
*Site Vice-President, Pickering*

**PIERRE TREMBLAY**
*Vice-President, Training and Services – Nuclear*

**JOHN FOX**
*Executive Vice-President and Managing Director, Genco*

**BOB BRYNIAK**
*Vice-President, Business Services – Genco*

**JIM BURPEE**
*Senior Vice-President, Electricity Production*

**DAVE COMISSIONG**
*Vice-President, Marketing and Sales – Genco*

**LARRY DORAN**
*Vice-President, Business Development – Genco*

**ELEANOR CLITHEROE**
*Executive Vice-President and Managing Director, Servco*

**JIM BROWN**
*Vice-President, Technology Services and New Product Development*

**IAN LONDON**
*Senior Vice-President, Diversified Operations*

**MALEN NG**
*Chief Financial Officer, Servco*

**GERRY O'HEARN**
*Senior Vice-President, Network Services*

**RON STEWART**
*Executive Vice-President, Transmission and Distribution*

**VIPIN SURI**
*General Manager, Distribution Network Asset Management, and Acting Vice-President, Customer Service & Commercial Relations*

**ROD TAYLOR**
*Senior Vice-President, Network Asset Management*

**BRUCE BENNETT**
*General Auditor*

**TED CLARK**
*Vice-President, Year 2000 Project*

**RICHARD DICERNI**
*Senior Vice-President, Corporate and Environmental Affairs*

**DAVE GOULDING**
*Senior Vice-President, Central Market Operations*

**CHUCK GYLES**
*Senior Vice-President, Corporate Human Resources*

**STEVE STROME**
*Vice-President, Labour Relations*

**PATRICK McNEIL**
*Vice-President, Corporate Planning*

**BARRY NICOL**
*Chief Financial Officer*

**JOHN MULLIGAN**
*Treasurer*

**DON VEINOT**
*Executive Director, Corporate Finance*

**JIM WILBEE**
*Executive Director, Pension Fund*

**JOAN PRIOR**
*Acting Senior Vice-President, Corporate General Counsel and Secretary*

**PLEASE RECYCLE**

Materials used in this report are environmentally friendly.
Cover and text stocks are recycled and recyclable,
with a minimum of 10% post-consumer waste.
Vegetable-based inks have been used throughout.

Ce rapport est également publié en français.

Ontario Hydro's former head office is now the head office of Ontario Power Generation Inc. and is located at 700 University Avenue, Toronto, Ontario M5G 1X6.

The Ontario Hydro Services Company head office is located at 483 Bay Street, Toronto, Ontario M5G 2P5.

Visit Ontario Hydro's site on the World Wide Web at www.hydro.on.ca

Also visit the websites of Ontario Hydro's successor companies:
Ontario Power Generation Inc. – www.ontariopowergeneration.com
Ontario Hydro Services Company – www.ohsc.com

09/99 10K

# Ontario Electricity Financial Corporation

2001

annual report

Ontario

Ontario Electricity Financial Corporation

# Table of Contents

**Message from the Chair and Chief Executive Officer** ..... **5**

**Management's Discussion and Analysis** ..... **7**

**Corporate Governance and Board of Directors** ..... **15**

**OEFC Financial Statements** ..... **17**

# Message from the Chair and Chief Executive Officer

We are pleased to present the second Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes the OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2001.

As outlined in the *Electricity Act, 1998,* the OEFC's mandate is to ensure that the outstanding debt and derivatives and certain assets and liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired. The OEFC is also responsible for the administration of the OEFC Pension Plan until its assets and liabilities can be transferred to pension plans of the other successor entities. The Ontario Financing Authority (OFA), Ontario Electricity Pension Services Corporation (OEPSC) and Ministry of Finance provide the OEFC with the staff and expertise needed for its operations and to fulfill its mandate.

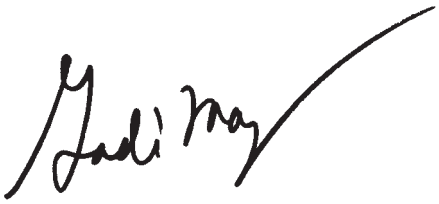
For the year ended March 31, 2001, revenues totalled $3,936 million, while expenses totalled $3,692 million. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt. Total debt outstanding as of March 31, 2001 was $30.6 billion, down $0.8 billion from the previous fiscal year.

During the year, the OEFC retained a contract manager to manage the non-utility generator (NUGs) contracts. Significant progress was also made in renegotiating the 90 power purchase agreements (PPAs) with the NUGs, with the objective of facilitating their integration into the open market.

In April 2001, the government announced that it is committed to opening the electricity market to competition by May 2002, possibly earlier if the necessary conditions for competition are in place.

We are pleased with the operation of the OEFC and look forward to the challenges of the upcoming year.

Bob Christie
Chair



Gadi Mayman
Vice-Chair and Chief Executive Officer (Interim)

# Management's Discussion and Analysis

## Electricity Industry Financial Structure

The *Energy Competition Act, 1998*, set out the Government of Ontario's plan to restructure Ontario's electricity industry. The plan called for the restructuring of Ontario Hydro and the elimination of its long-standing monopoly on electricity production with the introduction of competition to Ontario's electricity sector.

A key component of this initiative was to introduce a new financial structure for the electricity sector. This structure was announced on April 1, 1999. At this time, Ontario Hydro ceased operations and its assets and liabilities were transferred to five successor corporations and their subsidiaries.

Two commercial companies, Hydro One Inc. (HOI) and Ontario Power Generation Inc. (OPG), together with their subsidiaries, received the majority of Ontario Hydro's assets and in return issued $17.1 billion of debt to the Ontario Electricity Financial Corporation (OEFC), the legal continuation of Ontario Hydro.

To ensure fairness, reliability and safety in the new electricity market, the Independent Electricity Market Operator (IMO) and the Electrical Safety Authority (ESA) were also established. The IMO issued $0.1 billion of debt to the OEFC in return for Ontario Hydro's central market operator and regulatory assets.

To achieve commercially viable capital structures, HOI and OPG entered into debt-for-equity swaps with the Province of Ontario. In exchange for $3.8 billion of equity in HOI and $5.1 billion of equity in OPG, the Province assumed $8.9 billion of the debt issued to the OEFC by the successor corporations. The Province is the sole shareholder of HOI and OPG.

## Role of the Ontario Electricity Financial Corporation (OEFC)

As the legal continuation of Ontario Hydro, the OEFC became responsible for ensuring the prudent and efficient management and retirement of $38.1 billion (as of April 1, 1999) in debt and other liabilities of the former Ontario Hydro. The OEFC, an agency of the Province, is a statutory, non-share capital corporation.

The OEFC's Board of Directors is responsible for supervising the OEFC's operations. As the OEFC does not have staff, it retains the Ontario Financing Authority (OFA) and the Ministry of Finance and established the Ontario Electricity Pension Services Corporation (OEPSC) to carry out its daily operations.

The OFA is an agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages the OEFC's debt and derivative portfolios, and provides cash management, accounting and other financial services and support to the corporation.

The OEFC relies on a stream of dedicated revenues from the electricity sector to service its outstanding debt obligations. The Ministry of Finance is responsible for the administration and collection of the payments-in-lieu of taxes and the Debt Retirement Charge (DRC), which becomes effective upon market opening, on behalf of the OEFC.

The OEFC is also the administrator of the former Ontario Hydro Pension and Insurance Plan (since renamed the Ontario Electricity Financial Corporation Pension Plan). The OEFC will remain as the administrator until the assets and liabilities of the pension plan are transferred to the pension plans of the four successor corporations. The OEPSC acts as the agent of the OEFC in the administration of the pension plan and management of the pension fund during the transition period.

The *Electricity Act, 1998* requires the OEFC to enter into an agreement with the four successor corporations providing for the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the successor corporations. The five companies signed an agreement in principle on January 19, 2001. The final agreement was submitted to the Superintendent of Financial Services, on March 29, 2001, and was subsequently approved on June 6, 2001.

## Stranded Debt and Residual Stranded Debt

At April 1st 1999, the OEFC assumed approximately $38.1 billion in total liabilities from the former Ontario Hydro. The OEFC received a total of $17.2 billion represented by notes owing to it from the Province, OPG, HOI, and the IMO. The difference of approximately $20.9 billion represents "stranded debt", which is defined under the *Act* as the amount of debt and other liabilities of the OEFC that cannot reasonably be serviced and retired in a competitive electricity market.

The *Electricity Act, 1998* requires that dedicated electricity revenues must be paid by the successor entities and municipal electric utilities (MEUs) to the OEFC to service stranded debt. As of April 1, 1999, the present value of these revenue streams was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* also provides for a Debt Retirement Charge (DRC) to be paid to the OEFC to retire residual stranded debt.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of the OEFC is comprised of the liabilities of $38.1 billion (described above) less notes receivable above of $17.2 billion, less other loans receivable of $200 million, less other assets of $1.3 billion.

## Debt Repayment Plan

Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity sector restructuring, the government has established a long-term plan to retire debt from within the electricity sector. The $38.1 billion in obligations is being repaid from the following sources:

- *Notes receivable* from the Province, OPG, HOI and IMO;
- *Payments-in-lieu* (PILs) of corporate income, capital, and property taxes, made by OPG, HOI and municipal electric utilities (MEUs);
- *A Debt Retirement Charge (DRC),* to be paid by electricity consumers when the market opens to competition; and
- *Electricity Sector Dedicated Income.* Consistent with the government's commitment to keep electricity income in the electricity sector, the combined net incomes of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries is dedicated to the retirement of the OEFC's debt.

The government has committed to opening the electricity market by May 2002, but will work towards the earliest possible date for opening, if all of the necessary conditions are met. These conditions include: consumer protection and choice; a strong business climate with a reliable supply of safe, affordable electricity; environmental protection; and encouraging new ways of doing business and supporting the search for alternative sources of power.

## 2000-01 In Review

Highlights for the OEFC's second year of operation include:

- Completing long-term public borrowing of almost $3.0 billion;
- Cost-effective management of the debt and derivatives portfolios;
- Retention of an external manager to oversee the day-to-day administration and the sale of power acquired under the power purchase agreements with non-utility generators (NUGs);
- Ensuring the effective administration of the OEFC Pension Plan and Fund and finalizing an agreement on the division and transfer of the assets and liabilities of the OEFC Pension Plan to the pension plans of the four successor corporations to Ontario Hydro.

### Financing and Debt

Revenue in 2000-01 totalled $3,936 million, including $1,070 million of interest payments from HOI, OPG, IMO and the Province, $988 million from payments-in-lieu of tax, $408 million in electricity sector dedicated income, $695 million from power sales and $748 million from the revenue pool residual.

Expenses totalled $3,692 million, including $2,671 million in interest on the debt and nuclear funding liability, $146 million of amortization of deferred charges, $695 million for power purchases, $157 million for a debt guarantee fee and $23 million for operating costs.

As the OEFC does not have its own credit rating, the Province, through the OFA, borrows on the OEFC's behalf. In turn, the OEFC issues debt to the Province. To meet its 2000-01 financing requirements, the Province raised $2,924 million in long-term debt, while paying down short-term debt by $876 million and pre-borrowing $400 million for fiscal 2001-02. In 2000-01, the Province raised the majority of the OEFC's long-term financing in the Canadian dollar market.

As of March 31, 2001, total debt outstanding was $30.6 billion, decreasing by $0.8 billion from the previous fiscal year. This decrease is primarily due to principal repayments of notes receivable by HOI and OPG totalling $1,533 million.

With maturing debt and planned redemptions of $4.4 billion, along with a projected cash surplus of $0.8 billion in 2001-02, total financing requirements as of March 31, 2001 are projected at $3.6 billion. Total debt outstanding is projected to decrease to $29.4 billion at March 31, 2002.

The increase in Ontario Power Generation's (OPG) wholesale electricity rates, effective June 1, 2001, will improve OEFC's results in 2001-02 by increasing the OEFC's revenues from the revenue pool residual.

## Management of Power Purchase Contracts

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until the year 2048, provide for the purchase of power at prices that are expected to exceed the market price. As the continuation of Ontario Hydro, the OEFC is now the purchaser under these contracts.

The OEFC purchases about 1700 megawatts (MW) under the PPAs, representing approximately six per cent of the generating capacity available to meet Ontario's energy requirements.

Currently, the power purchased by the OEFC from the NUGs is resold at cost to the revenue pool managed by OPG. After open access, the power will be sold in the market. The net present value of the liability of the above-market costs resulting from the difference between the purchase price and the selling price over the life of the contracts was estimated at $4.3 billion at April 1, 1999.

In 2000-01, the OEFC issued a Request for Proposals (RFP) to retain a contract manager to manage the NUG contracts. Enron Canada Corporation was selected as the successful respondent to the RFP.

The OEFC is currently in the process of negotiating revisions to the PPAs to facilitate the transition to an open market and to replace certain contract provisions that have become obsolete as a result of the electricity restructuring.

## OEFC Pension Plan

The OEFC is the administrator of the OEFC Pension Plan (formerly the Ontario Hydro Pension and Insurance Plan), including the pension fund.

The Ontario Electricity Pension Services Corporation (OEPSC) was established as a subsidiary of the OEFC to act as the OEFC's agent in the administration and day-to-day operations of the OEFC Pension Plan until the assets and liabilities can be transferred to the pension plans of the other Ontario Hydro successor corporations.

The *Electricity Act, 1998* provides for the transfer of assets and liabilities from the OEFC Pension Plan to the successor companies' pension plans in accordance with a transfer agreement to be entered into by the OEFC with the administrators of each successor company pension plan. The OEPSC is responsible for preparing the transfer agreement in accordance with the guidelines set out in the *Electricity Act, 1998* and under the supervision of the OEFC's pension committee and in consultation with the successor corporations. On June 6, 2001, the Superintendent of Financial Services consented in writing to the transfer of assets from the OEFC Pension Plan to the pension plans of the four successor corporations.

## Risk Management

The OEFC has a number of policies in place to address the financial risks to which it is exposed through its borrowing and debt management activities.

### Market Risk

The market risk policy provides a framework for the management of foreign exchange and interest rate risks to which the OEFC is exposed through the financing and debt management programs.

*Foreign Exchange Exposures:* The target for unhedged foreign currency exposure by the end of fiscal 2001-02 is five per cent of outstanding debt. When the OFA became responsible for the management of the OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent. The OFA reduced the OEFC's exposure to 7.1 per cent as of March 31, 2001. The OFA will continue to reduce the level of exposure towards the five per cent target in a prudent manner.

*Floating Interest Rate Exposure:* The limit on the OEFC's floating interest rate exposure (net of liquid reserves) is 20 per cent of debt outstanding. Actual floating interest rate exposure was 5.7 per cent as of March 31, 2001.

*Debt Maturity Profile:* When issuing new debt, the OFA, on behalf of the OEFC, will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt. The maturity profile can be found in Note 8 to the Financial Statements.

### Credit Risk

Credit risk is the risk that a counterparty does not meet, or defaults, on its obligations. Credit risk arises when the OEFC undertakes financial and derivatives transactions. The minimum credit rating of a counterparty is A- and R1-mid for money market investments. However, for a new swap transaction the OEFC typically deals with AA- or better credit. The resulting exposure is capped at mark-to-market limits, depending on the counterparty's credit rating.

### Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is kept informed of the OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

The CEO provides the Board of Directors with a progress report on the implementation of the financing and debt management plan, staffing and other administrative and operational matters. The CEO also reports on the OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

The Director of Risk Control, OFA, reports additional details on the OEFC's exposures and performance.

Exception reports are provided to the Board of Directors immediately when required.

OFA Management is kept informed of the OEFC's risk exposures and positions on a daily basis. The OEFC's Annual Financing and Debt Management Plan, which shows how the OFA will ensure that risk exposures and losses remain within the approved exposure and loss limits, is approved by the Board of Directors.

**Use of Financial Instruments and Derivatives**

New instruments can be used only after approval by the OEFC Board of Directors and if their use is authorized under the OEFC's by-laws, which are approved by the Minister of Finance. All instruments are used only to advance the OEFC's objective of managing the OEFC's debt and its financing and liquidity requirements in a prudent and cost-effective manner.

Derivatives and financial instruments can be used only if the OFA can price and value them and quantify their risks. Furthermore, risks that arise with the use of derivatives are identified, evaluated, reported, monitored and managed prudently.

# Corporate Governance and Board of Directors

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising the OEFC's operations, which are carried out by the Ontario Financing Authority, Ministry of Finance and Ontario Electricity Pension Services Corporation on a day-to-day basis. The Board of Directors meets at least quarterly.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of the OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls.

The OEFC Pension Committee is a committee of the Board of Directors that makes decisions concerning the OEFC Pension Plan and oversees the activities of the OEPSC.

## Board of Directors

- **Bob Christie** — Chair and Deputy Minister of Finance.
- **Gadi Mayman** — CEO and Vice-Chair, CEO and Vice-Chair of the Ontario Financing Authority (Interim).
- **Bryne Purchase** — Deputy Minister, Energy, Science and Technology.
- **Brian FitzGerald** — Fellow of the Canadian Institute of Actuaries, Chair, OEFC Pension Committee.
- **Bruce Macnaughton** — Director, Pension and Income Security Policy Branch, Ministry of Finance.
- **Tom Sweeting** — Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance, Chair, OEFC Audit Committee.

# OEFC Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

**Sources of Additional Information**

# Responsibility for Financial Reporting

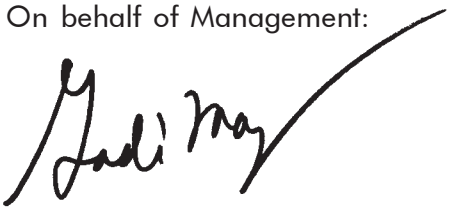
The accompanying financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles generally accepted in Canada and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to June 1, 2001.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. An internal audit function independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with generally accepted accounting principles. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Gadi Mayman
Vice-Chair and
Chief Executive Officer (Interim)

# Auditor's Report

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2001 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2001 and the results of its operations and its cash flows for the year then ended, in accordance with Canadian generally accepted accounting principles.

Toronto, Ontario
June 1, 2001

Erik Peters, FCA
Provincial Auditor

# Ontario Electricity Financial Corporation

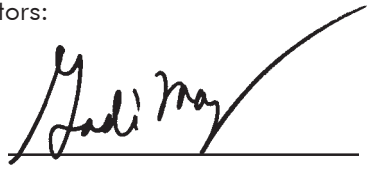
## Consolidated Balance Sheet as at March 31, 2001

(with comparative figures at March 31, 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 399 | $ 2 |
| Accounts receivable | 293 | 134 |
| Interest receivable | 112 | 119 |
| Current portion of notes receivable (Note 7) | 640 | 1,533 |
| | 1,444 | 1,788 |
| Payments-in-lieu of tax receivable (Note 11) | 284 | — |
| Electricity sector dedicated income due from Province (Note 6) | 791 | 383 |
| Notes and loans receivable (Note 7) | 15,279 | 15,894 |
| Deferred debt costs | 983 | 914 |
| | $ 18,781 | $ 18,979 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 326 | $ 101 |
| Interest payable | 734 | 726 |
| Short-term notes payable (Note 8) | 2,570 | 3,446 |
| Current portion of long-term debt (Note 8) | 2,774 | 2,226 |
| | 6,404 | 6,499 |
| Long-term debt (Note 8) | 25,222 | 25,666 |
| Power purchase contracts (Note 9) | 4,286 | 4,286 |
| Nuclear funding liability (Note 9) | 2,659 | 2,515 |
| | 38,571 | 38,966 |
| Guarantees (Note 13) | | |
| **UNFUNDED LIABILITY** (Note 4, 11) | (19,790) | (19,987) |
| Approved on behalf of the Board of Directors: | $ 18,781 | $ 18,979 |

Bob Christie
Chair



Gadi Mayman
Vice-Chair

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Revenue, Expense and Unfunded Liability

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **REVENUE** | | |
| Revenue pool residual (Note 10) | $ 748 | $ 172 |
| Payments-in-lieu of tax | 988 | 889 |
| Interest | 1,070 | 1,118 |
| Power sales (Note 9) | 695 | 741 |
| Electricity sector dedicated income (Note 6) | 408 | 383 |
| Other | 27 | 27 |
| Total Revenue | 3,936 | 3,330 |
| **EXPENSE** | | |
| Interest - short-term debt | 166 | 158 |
| Interest - long-term debt | 2,361 | 2,490 |
| Interest on nuclear funding liability | 144 | 137 |
| Amortization of deferred charges | 146 | 180 |
| Power purchases (Note 9) | 695 | 741 |
| Debt guarantee fee | 157 | 156 |
| Operating | 23 | 22 |
| Total Expense | 3,692 | 3,884 |
| Excess (deficiency) of revenue over expense | 244 | (554) |
| Unfunded Liability (Note 11) | 20,034 | 19,433 |
| Unfunded Liability, end of year | $ 19,790 | $ 19,987 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation

## Consolidated Statement of Cash Flows

for the Year Ended March 31, 2001

(with comparative figures for 2000)

($ Millions)

| | March 31 2001 | March 31 2000 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Excess (deficiency) of revenue over expense | $ 244 | $ (554) |
| Adjustments for: | | |
| Amortization of deferred debt costs | 146 | 180 |
| Interest on nuclear funding liability | 144 | 137 |
| Electricity sector dedicated income due from Province | (408) | (383) |
| Payments-in-lieu of tax receivable | (284) | — |
| Net change in other balance sheet accounts | (18) | (249) |
| Net cash used in operations | (176) | (869) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 2,924 | 1,827 |
| Less long-term debt retired | 3,008 | 1,670 |
| Long-term debt issued (retired), net | (84) | 157 |
| Short-term debt issued (retired), net | (876) | 695 |
| Payment from notes receivable | 1,533 | — |
| Net cash provided by financing activities | 573 | 852 |
| Increase (decrease) in cash and cash equivalents | 397 | (17) |
| Cash and cash equivalents, beginning of year | 2 | 19 |
| Cash and cash equivalents, end of year | $ 399 | $ 2 |
| Interest paid during the year and included in excess (deficiency) of revenue over expense | $ 2,575 | $ 2,685 |

*See accompanying notes to financial statements.*

# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). OEFC is a corporation established under the laws of Ontario. It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (HOI), a regulated electricity transmission and distribution business that operates certain energy service businesses in an unregulated, competitive environment;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro were transferred to OPG and HOI (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and HOI respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access. Until open access, OEFC will continue to be a party to a revenue-allocation agreement among successor entities and is entitled to the forecast residual amount in the revenue pool after allocations to OPG, HOI and the IMO are paid.

## 2. Summary of Significant Accounting Policies

Basis of Accounting

These financial statements are prepared in accordance with Canadian generally accepted accounting principles (GAAP) as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

### Measurement Uncertainty

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated liability for power purchase agreements (see Note 9 for additional details). In addition, the amount of the nuclear funding liability is dependent on an agreement currently under negotiation between the Province and OPG. Estimates are based on the best information available at the time of preparation of the financial statements and will be adjusted annually to reflect new information as it becomes available.

### Consolidation

These financial statements include the accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

### Deferred Debt Costs

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts or premiums arising from the issuance of debt or the acquisition of debt prior to maturity.

### Revenue Recognition

Revenues are recognized in the period in which they are earned. Amounts received prior to being earned are reflected as deferred revenues.

### Foreign Currency Translation

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that has been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

## 3. Ontario Electricity Pension Services Corporation

OEFC is the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It is responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acts as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund. Costs associated with the administration of the OEFC Pension Plan and Fund amounting to approximately $17 million in calendar 2000 (calendar 1999 - $17 million) are charged to and payable by the pension fund.

OEPSC has made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 11. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Electricity Sector Dedicated Income

The Province has committed to dedicate the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2001, OPG and HOI earned an aggregate amount of $928 million ($903 million for 2000) i.e., $408 million ($383 million for 2000) in excess of the Province's $520 million interest cost of the equity investments in those companies. The $408 million amount has been reflected as income in OEFC and as an increase in the receivable from the Province.

## 7. Notes and Loans Receivable

($ millions)

| | Interest rate | Interest payable | March 31, 2001 | Maturity date | March 31, 2000 |
|---|---|---|---|---|---|
| Province of Ontario | 5.85 | Monthly | $ 8,885 | 2039 - 2041 | $ 8,885 |
| OPG | 5.3 to 6.65 | Semi-annually | 3,300 | 2002 - 2011 | 3,400 |
| HOI | 5.4 to 14.3 | Semi-annually | 3,412 | 2001 - 2007 | 4,845 |
| IMO | 7.90 | Semi-annually | 78 | 2009 | 78 |
| | | | 15,675 | | 17,208 |
| Less: current portion of notes receivable | | | 640 | | 1,533 |
| | | | 15,035 | | 15,675 |
| Loans receivable from non-utility generators (NUGs) (See Note 9) | | | 244 | | 219 |
| | | | $ 15,279 | | $ 15,894 |

OEFC has agreed with OPG, HOI and IMO not to sell notes owing from these successor entities without their prior approval.

## 8. Debt

Debt at March 31, 2001 is set out below by maturity and by original currency of issue.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2001 Total | 2000 Total |
|---|---|---|---|---|---|
| Maturing before: | | | | | |
| March 31, 2001 | — | — | — | — | 5,672 |
| March 31, 2002 | 4,203 | 1,141 | — | 5,344 | 2,708 |
| March 31, 2003 | 2,548 | — | — | 2,548 | 2,848 |
| March 31, 2004 | 1,748 | — | 65 | 1,813 | 1,813 |
| March 31, 2005 | 2,700 | — | — | 2,700 | 2,000 |
| March 31, 2006 | 1,000 | — | — | 1,000 | — |
| 1-5 years | 12,199 | 1,141 | 65 | 13,405 | 15,041 |
| 6-10 years | 7,124 | 1,530 | — | 8,654 | 6,787 |
| 11-15 years | 648 | 1,183 | — | 1,831 | 2,876 |
| 16-20 years | 1,078 | — | — | 1,078 | 500 |
| 21-25 years | 3,558 | — | — | 3,558 | 3,133 |
| 26-50 years | 2,040 | — | — | 2,040 | 3,001 |
| Total | $ 26,647 | $ 3,854 | $ 65 | $ 30,566 | $ 31,338 |

The effective rate of interest on the debt portfolio is 7.85% before considering the effect of derivative instruments used to manage interest rate risk. As at March 31, 2001, $2.2 billion of the $3.9 billion foreign debt is hedged. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2001 | | | March 31, 2000 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 2,570 | — | 2,570 | 3,446 | — | 3,446 |
| Current portion of long-term debt | 569 | 2,205 | 2,774 | 500 | 1,726 | 2,226 |
| Long-term debt | 8,056 | 17,166 | 25,222 | 5,701 | 19,965 | 25,666 |
| Total | $ 11,195 | $ 19,371 | $ 30,566 | $ 9,647 | $ 21,691 | $ 31,338 |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2001 is $34.4 billion (March 31, 2000 - $35.4 billion). This is higher than the book value of $30.6 billion (March 31, 2000 - $31.3 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Long-Term Liabilities

Power purchase contracts and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. This liability has been valued at $4,286 million on a discounted cash-flow basis. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. Currently, the power purchased from NUGs is resold at cost to the power grid managed by OPG. However, after open access, this power will be sold at market prices that may be greater or less than cost.

During the year, OEFC purchased power in the amount of $695 million (March 31, 2000 - $741 million) and sold this power to the power grid for the same amount. HOI manages the NUG power purchase contracts and the related loans on behalf of OEFC for an annual fee of $3 million (March 31, 2000 - $3 million), partially offset by a recovery of $2 million (March 31, 2000 - Nil) of transmission expansion costs originally paid by Ontario Hydro, which net cost is included in operating expense. Loans to NUGs increased during the year by $25 million to $244 million at March 31, 2001 (March 31, 2000 - $219 million), primarily due to interest revenue during the year which has been added to the principal balance.

Nuclear funding liability - OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. Interest has been accrued at an estimated 5.75 per cent and is included in the total value of $2,659 million as at March 31, 2001 (March 31, 2000 - $2,515 million). The interest rate is still under negotiation with the Province and is subject to change. The impact of the finalization of the interest rate for the fiscal year is not expected to result in a material difference to the liability balance.

## 10. Revenue Pool Residual

As explained in Note 1, OEFC is the beneficial owner of the forecast residual of the revenue pool, managed by OPG, which collects revenues from electricity consumers and allocates revenues to OPG, Hydro One and the IMO. The forecast residual of the revenue pool is cyclical in nature due to seasonal variations in pricing. As a result, the residual, while positive in the first and fourth quarters of the calendar year, is negative in the second and third quarters.

It was agreed by OEFC and OPG that OEFC would receive an average payment per month which would eliminate the seasonal variation in the pool residual and ensure that OEFC would never need to borrow cash to make up the shortfall. In the accounts, this revenue stream was recorded as received, adjusted for the one month accrual at each year-end.

These interim arrangements were to remain in effect until open access at which time the revenue pool would cease to operate and the Debt Retirement Charge (DRC) would be collected direct from electricity consumers. Open access was originally announced for November 2000 and OEFC's forecast residual for calendar 2000 was calculated over the ten months ended October in anticipation of the November opening. Once open access was delayed past November, it became apparent that the term over which the average should be calculated was unknown. Consequently, beginning in

November 2000, OEFC began to receive the forecast residual as earned each month and reflected this stream as revenue in the accounts. The revenue in OEFC in fiscal 2000-01 has benefitted by including both the increased revenue over the summer of 2000 and the real earnings in the pool over the winter of 2000-01.

## 11. Unfunded Liability

In the previous year, PILs revenue was recognized on a cash basis and reflected only cash received during the year. For fiscal 2000-01, OEFC has changed its accounting policy to recognize PILs revenue on an accrual basis. The change was made to conform with accounting policies of the Province. Therefore, PILs earned during the year will now include deferred taxes, regardless of when those taxes will be paid.

The previously unrecognized $200 million accrual of PILs revenue has been added to the balance of the opening unfunded liability. In addition, the opening unfunded liability has also been adjusted to account for working capital adjustments in successor companies in the amount of $247 million. The effect of these adjustments is as follows:

| | |
|---|---|
| Unfunded Liability, March 31, 2000 | $ 19,987 |
| Adjustments during the year: | |
| Accrual for PILs revenue | (200) |
| Working capital for OPG and HOI | 247 |
| Balance after adjustments | $ 20,034 |

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. Pursuant to the *Electricity Act, 1998* and consistent with the principles of electricity restructuring, the government has a long-term plan in place to retire OEFC liabilities, from within the electricity industry. The Plan includes cash flows from the following sources as at April 1, 1999:

Notes receivable from the Province of $8.9 billion, OPG of $3.4 billion, HOI of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

Payments-in-lieu of corporate income, property and capital taxes made by OPG, HOI and municipal electric utilities.

A Debt Retirement Charge to be paid by ratepayers based on the consumption of electricity, and

Electricity Sector Dedicated Income - Consistent with the Government's commitment to keep electricity income in the electricity sector, the combined net income of OPG and HOI in excess of the Province's cost of its investment in its electricity subsidiaries will be set aside for the retirement of OEFC's debt.

The long-term plan supports estimates that OEFC's obligations will be defeased in the years ranging from 2010 to 2017.

## 12. Risk Management and Derivative Financial Instruments

OEFC employs prudent risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is well managed. A variety of strategies are used, including the use of derivative financial instruments ("derivatives").

Derivatives are financial contracts, the value of which is derived from underlying assets. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At year end, 7.1 per cent of this debt was unhedged, with most of the currency exposure to US dollars.

Interest rate risk is the risk of debt servicing costs varying due to changes in interest rates. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At year end, OEFC's floating rate debt as a percentage of total debt was 5.7 per cent.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2001, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit or market risk. Notional amounts are not representative of actual cash flows.

Derivative Portfolio Notional Value
($ millions)
As at March 31, 2001

| Maturity in Fiscal Year | 2002 | 2003 | 2004 | 2005 | 2006 | 6-10 Years | Over 10 Years | Total | 2000 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 284 | - | 638 | - | - | 884 | - | 1,806 | 1,307 |
| Interest rate swaps | 797 | 505 | 1,814 | 292 | 730 | 1,235 | 1,520 | 6,893 | 6,179 |
| Forward foreign exchange contracts | 1,171 | - | - | - | - | - | - | 1,171 | 1,151 |
| Other | 662 | - | - | - | - | - | - | 662 | 1,445 |
| Total | $ 2,914 | 505 | 2,452 | 292 | 730 | 2,119 | 1,520 | 10,532 | 10,082 |

Entering into derivatives contracts results in credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2001.

| Credit Risk Exposure ($ millions) | March 31, 2001 | March 31, 2000 |
|---|---|---|
| Gross credit risk exposure | 5,437 | 4,850 |
| Less: Netting agreements | (5,519) | (5,019) |
| Net credit risk exposure | $ (82) | $ (169) |

Note:

Contracts do not have coterminous settlement dates. Netting agreements use generally accepted forms and terms developed by the International Swaps and Derivatives Association (ISDA). Based on ISDA definitions, total exposure to counterparties with positive exposure was $210 million (meaning that counterparties owed OEFC) and total exposure to counterparties with negative exposure was $292 million (meaning that OEFC owed counterparties) for a total net credit exposure to ($82) million on March 31, 2001.

OEFC manages its credit risk exposure through daily monitoring compliance with credit limits and by dealing with counterparties with good credit ratings of A- or higher. Counterparties for money market and other short-term transactions must have at least an R1-mid rating by Dominion Bond Rating Service or an A-1 or P-1 rating by Standard and Poor's or Moody's respectively.

OEFC also limits its credit risk exposure on derivatives by entering into contractual netting agreements with virtually all of its counterparties, which enables it to settle derivative contracts on a net basis in the event of a counterparty default. The gross credit risk exposure represents the amount of loss that OEFC would suffer if every counterparty to which OEFC was exposed were to default at the same time and no netting of negative exposures was allowed. The net credit risk exposure includes the mitigating impact of these netting agreements.

## 13. Guarantees

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify HOI and OPG in respect of any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999, any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 9. These guarantees total approximately $135 million at March 31, 2001 (March 31, 2000 - $146 million).

## 14. Comparative Figures

Prior year's figures have been re-classified where necessary to conform with the current year's presentation.

# Sources of Additional Information

## Internet:

### Ontario Electricity Financial Corporation: www.oefc.on.ca

- Provides information on the OEFC's debt, pension plan, board of directors and contains publications pertaining to the OEFC.

### Ontario Financing Authority (OFA): www.ofina.on.ca

- Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links:

| | |
|---|---|
| **Ministry of Finance :** | www.fin.gov.on.ca |
| **Ministry of Energy Science and Technology :** | www.est.gov.on.ca |
| **Ontario Power Generation Inc. :** | www.opg.com |
| **Hydro One Inc. :** | www.hydroone.com |
| **Ontario Electrical Safety Authority :** | www.esainspection.net |
| **Independent Electricity Market Operator :** | www.iemo.com |

## Contact Addresses and Numbers:

**General Information:**
Investor Relations, Capital Markets Division
Telephone: 416-325-0918
e-mail: investor@oefc.on.ca

**OEFC Pension Plan:**
Telephone: 1-888-336-6629
Monday to Friday, 8:00 a.m. to 6:00 p.m.
e-mail: pension@oefc.on.ca

**For additional copies of this annual report, please contact:**
Ontario Electricity Financial Corporation
1 Dundas Street West, Suite 1400
Toronto, Ontario, Canada M7A 1Y7
Telephone: 416-325-8000

© Queen's Printer for Ontario
ISSN 1492-7543

# Ontario Electricity Financial Corporation

## 2003 Annual Report

Ontario

Ontario Electricity Financial Corporation

## Corporate Overview

Ontario Electricity Financial Corporation (OEFC), an agency of the Province of Ontario, is a statutory, non-share capital corporation and the legal continuation of Ontario Hydro.

OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The OFA is the agency of the Province of Ontario responsible for provincial borrowing and debt management activities. The OFA manages OEFC's debt, derivatives and non-utility generator (NUG) portfolios, and provides cash management, accounting and other financial services and support to the corporation. The Ministry of Finance manages the collection and reporting of payments-in-lieu of tax on behalf of OEFC.

OEFC's Board of Directors is responsible for supervising OEFC's operations, which are as follows:

- Manage the outstanding debt and derivatives portfolios, financial risks and other liabilities of the former Ontario Hydro;
- Manage the long-term power purchase agreements and provide the associated risk management infrastructure;
- Manage the Electricity Consumer Price Protection Fund (ECPPF);
- Receive payments and administer assets, liabilities, rights and obligations of the Corporation that have not been transferred to other Ontario Hydro successor corporations, and dispose of these as it deems appropriate or as directed by the Minister of Finance; and
- Perform any additional functions as required by the Lieutenant-Governor-in-Council.

## Table of Contents

**Message from the Chair** 5

**Management's Discussion and Analysis** 7

- 2002-03 Highlights
- Overview of Financial Results
- Revenues
- Expenses
- Borrowing Program
- Debt Management
- Stranded Debt and Residual Stranded Debt
- Debt and Liabilities
- Risk Management
- Management of Power Purchase Agreements
- *Electricity Pricing, Conservation and Supply Act, 2002*
- Objectives for 2003-04

**OEFC Financial Statements** 13

- Responsibility for Financial Reporting
- Auditor's Report
- Consolidated Balance Sheet
- Consolidated Statement of Revenue, Expense and Unfunded Liability
- Consolidated Statement of Cash Flows
- Notes to Financial Statements

**Corporate Governance** 26

- The Board of Directors
- Corporate Policies

**Additional Sources of Information** 31

## Message from the Chair

I am pleased to present the 2003 Annual Report of the Ontario Electricity Financial Corporation (OEFC). The report describes OEFC's objectives and responsibilities, operational highlights and financial results for the year ended March 31, 2003.

As outlined in the *Electricity Act, 1998,* OEFC's primary objective is to ensure that the outstanding debt and derivatives portfolios and certain other liabilities of the former Ontario Hydro are managed efficiently and prudently and are ultimately retired.

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million. In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999 and the issuance of $967 million in long-term debt.

During the year, OEFC achieved its objectives of cost-effective borrowing and debt management and prudent risk management, negotiated revisions to non-utility generator (NUG) contracts to facilitate their integration into the competitive electricity market, and continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner.

On December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF) established as a result of the Act.

OEFC will continue to monitor new developments in the electricity industry that will affect the operating results of the corporation in the 2003-04 fiscal year.

Bob Christie
Chair

# Management's Discussion and Analysis

OEFC accomplished its key objectives for 2002-03:

- Achieved cost-effective borrowing and debt management and prudent risk management;
- Negotiated revisions to certain contracts with non-utility generators (NUG contracts) to facilitate their integration into the competitive electricity market;
- Continued to develop the necessary infrastructure to manage the NUG contracts and related exposures in a competitive market in a cost-effective and prudent manner; and
- Managed the Electricity Consumer Price Protection Fund (ECPPF) created under the *Electricity Pricing, Conservation and Supply Act, 2002.*

## 2002-03 Highlights

- Sold $1.9 billion of the Hydro One notes held since April 1, 1999, resulting in a gain of $206 million for OEFC. This sale represented the largest-ever corporate debt trade in the Canadian domestic debt market.
- Reduced total debt outstanding by $2.5 billion to $26.8 billion from $29.4 billion as at March 31, 2002.
- Lowered total debt exposed to fluctuations in foreign currencies to 6.3 per cent of outstanding debt from 7.5 per cent and down from 14.5 per cent at the time of OEFC's establishment in 1999.

## Overview of Financial Results

For the year ended March 31, 2003, revenues totalled $3,797 million, while expenses totalled $3,895 million, resulting in a deficiency of revenue over expense of $98 million, compared to the prior year's deficiency of revenue over expense of $69 million.

## Revenues

OEFC's total revenues for 2002-03 were $3,797 million, an increase of $253 million from 2002. OEFC's revenues consisted of the Debt Retirement Charge and revenue pool residual up to market opening; payments-in-lieu of tax; interest income from the Province, OPG, Hydro One, and IMO; power sales; a net reduction of power purchase contracts; a gain on the sale of Hydro One notes; and electricity sector dedicated income.

The Debt Retirement Charge, which replaced the revenue pool residual when Ontario's electricity market opened to competition on May 1, 2002, amounted to $889 million over 11 months in 2002-03.

In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million. After taking into account the Province's financing cost of its investment in its electricity subsidiaries of $520 million, OEFC recorded $197 million in electricity sector dedicated income. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost.

In February 2003, OPG reached an agreement with OEFC to defer payment on $700 million principal amount of senior notes owing to OEFC by extending the maturity dates by two years. The interest rates on these notes remain unchanged.

## Expenses

OEFC's total expenses for 2002-03 were $3,895 million, an increase of $282 million from 2002. OEFC's expenses consist of interest on its debt and nuclear funding liability, amortization of deferred charges, expenditures in the Electricity Consumer Price Protection Fund (ECPPF), power purchases, a debt guarantee fee and operating costs.

## Borrowing Program

In 2002-03, the Province completed OEFC's borrowing requirements, including long-term debt maturities of $2,775 million, through $2,084 million raised from the sale of Hydro One notes held since April 1, 1999, and the issuance of $967 million in long-term debt.

Long-term borrowing was completed through two Province of Ontario U.S. dollar global issues and two domestic issues that were on-lent to OEFC:

- C$425 million (Canadian dollar equivalent) raised through a portion of a US$750 million U.S. dollar global issue maturing in December 2005;
- C$447 million (Canadian dollar equivalent) raised from a US$300 million U.S. dollar global issue maturing in March 2008; and
- C$95 million raised from two non-public debentures maturing in January and June 2022.

## Debt Management

The repayment of OEFC obligations remains a priority and is an integral part of Ontario's electricity sector restructuring objectives. Pursuant to the *Electricity Act, 1998*, a long-term plan was established to retire debt from within the electricity sector. The long-term debt repayment plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## Debt Repayment Plan

OEFC's obligations are being repaid from the following revenue sources:

**Notes Receivable**

OEFC receives principal and interest payments from the Province, Ontario Power Generation Inc. (OPG), Hydro One and the Independent Electricity Market Operator (IMO) arising from the restructuring of the electricity sector.

**Payments-in-Lieu of Tax (PILs)**

OEFC receives payments-in-lieu of corporate income, capital and property taxes made by OPG, Hydro One and municipal electric utilities (MEUs).

**Debt Retirement Charge (DRC)**

The DRC was introduced on May 1, 2002, the date the electricity market opened to competition, and is paid by electricity consumers. The DRC is administered by the Ministry of Finance on behalf of OEFC and will end once the residual stranded debt is retired. Prior to May 1, 2002, OEFC received the residual of the revenue pool. This pool, managed by OPG, collected revenues from electricity consumers and allocated revenues to OPG, Hydro One and IMO, with the residual going to OEFC.

**Electricity Sector Dedicated Income**

The combined net incomes of OPG and Hydro One in excess of the Province's interest cost of its investment in its electricity subsidiaries are dedicated to the retirement of OEFC's debt.

## Stranded Debt and Residual Stranded Debt

OEFC assumed approximately $38.1 billion in total debt and other liabilities from the former Ontario Hydro upon the restructuring of Ontario's electricity sector on April 1, 1999. As part of the restructuring, OEFC received a total of $17.2 billion in notes owing from the Province, OPG, Hydro One and the IMO. The difference of approximately $20.9 billion represented "stranded debt," which is defined under the *Electricity Act, 1998* as the amount of debt and other liabilities of OEFC that cannot reasonably be serviced and retired by commercial companies in a competitive electricity market.

The *Electricity Act, 1998* requires that payments-in-lieu of taxes must be paid by the successor entities and municipal electric utilities (MEUs) to OEFC to service stranded debt. As at April 1, 1999, the present value of these dedicated revenues and Electricity Sector Dedicated Income was estimated at $13.1 billion, resulting in an estimated $7.8 billion of residual stranded debt. The *Electricity Act, 1998* provided for a Debt Retirement Charge (DRC) to be paid by consumers until the residual stranded debt is retired.

The April 1, 1999 Unfunded Liability (the stranded debt from electricity sector restructuring to be recovered from ratepayers) of $19.4 billion of OEFC was composed of the $38.1 billion (described above) less notes receivable of $17.2 billion, less loans receivable and other assets of $1.5 billion.

Unfunded Liability as of March 31, 2003 was $20.2 billion.

## Debt and Liabilities

OEFC's total debt outstanding declined by $2.5 billion to $26.8 billion as of March 31, 2003. OEFC has reduced total debt outstanding by over $4.5 billion from its peak on March 31, 2000.

OEFC's total debt and liabilities are $34.7 billion as of March 31, 2003, down from $37.6 billion as of March 31, 2002.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale, as interest rates payable on the notes were above market interest rates, which allowed the Province to reduce OEFC's total debt. The notes had maturities ranging from January 2004 to August 2007 and coupons ranging between 5.375 per cent to 14.25 per cent. In order to facilitate the sale of these notes in the Canadian public capital markets, OEFC and Hydro One agreed to restructure the debt by converting the coupons and principal amounts to reflect current interest rates. The sale represented the largest ever corporate debt trade in the Canadian domestic debt market.

For more information on debt and other liabilities, see Notes 8 to 12 to the Financial Statements.

## Risk Management

OEFC has risk management policies and procedures in place to address the management of OEFC's market, credit and operational risk exposures, primarily pertaining to OEFC's debt, derivatives and NUG portfolios, and capital markets transactions. A description of OEFC's risk management policies can be found in the Corporate Policies section.

| Risk Exposures (Percentage of Outstanding Debt) | 2003 | 2002 | Policy Limit |
|---|---|---|---|
| Foreign Exchange Exposure | 6.3 | 7.5 | 20.0* |
| Floating Interest Rate Exposure (net of liquid reserves) | 13.5 | 9.8 | 20.0 |

*The foreign exchange policy limit will be reduced to five per cent as soon as feasible and prudent.
March 31, 2003

OEFC's foreign exchange and floating interest rate exposures remained within policy limits of 20 per cent in 2002-03.

OEFC's total debt exposed to fluctuations in foreign currencies ("foreign exchange exposure") declined to 6.3 per cent as a result of active debt management and hedging strategies which took advantage of a strengthening Canadian dollar to reduce the foreign exchange exposure of OEFC's debt portfolio. The reduction in the OEFC's foreign exchange exposure was in line with the OEFC's Annual Financing and Debt Management Plan. When the OFA became responsible for the management of OEFC's debt portfolio, total debt exposed to fluctuations in foreign currencies was 14.5 per cent.

The OEFC's exposure to changes in short-term rates ("floating interest rate exposure") was 13.5 per cent as at March 31, 2003.

When issuing new debt, the OFA, on behalf of OEFC, aims for a smooth debt maturity profile to diversify the interest rate risk inherent in refinancing maturing and floating rate debt.

OEFC has also developed the NUG Market Risk Policy and Credit and Related Legal Risks Policy to address risks related to the sale of electricity from NUG contracts. NUG contracts involve risk in both financial and commodity markets.

## Management of Power Purchase Agreements

In the late 1980s and early 1990s, the former Ontario Hydro entered into approximately 90 long-term power purchase agreements (PPAs) with non-utility generators (NUGs) located in Ontario. These PPAs, which expire on various dates until 2048, represent approximately 1,700 megawatts of generating capacity and approximately $750 million per year in cash outflow. The PPAs account for about six to eight per cent of the generating capacity available to meet Ontario's energy requirements.

As the continuation of Ontario Hydro, OEFC is responsible for these contracts. The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003, which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability. Details are set out in Note 10 to the Financial Statements.

OEFC has retained UBS Warburg Energy (Canada) Ltd. to act as settlement services manager of the PPAs with the NUGs, and to establish systems and procedures for the administration of the PPAs in the open electricity market as well as develop and implement strategies for hedging OEFC's price risk associated with sales of electricity. OEFC continues to negotiate revisions to the NUG contracts to ensure that the contracts are consistent with the open electricity market.

A policy framework for the prudent risk management of NUG electricity sales associated with the PPAs, including market and credit risk management policies, was approved. These policies establish the foundation for the assessment, monitoring and reporting of electricity market and credit risks and are similar in structure to the corresponding policies for the management of traditional financial market and credit exposures.

## *The Electricity Pricing, Conservation and Supply Act, 2002*

Ontario's electricity market opened to competition on May 1, 2002. The wholesale price of electricity is determined by supply and demand in a competitive market.

While the wholesale market continues to operate in a competitive environment, on December 9, 2002, the *Electricity Pricing, Conservation and Supply Act, 2002* was passed to freeze the price that low volume and designated consumers pay for electricity at 4.3 cents per kilowatt-hour (¢/kWh) until at least 2006. OEFC is responsible for managing the Electricity Consumer Price Protection Fund (ECPPF or the "Fund") established as a result of the Act.

### Fund Management

OEFC is required to pay to or receive from the IMO any difference between the current market price (the "spot price") and the fixed 4.3¢/kWh charged to consumers designated under the Act.

- When spot prices are higher than 4.3¢/kWh, OEFC will make a payment to the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will reduce the amount payable by the distributors for amounts consumed by a corresponding amount down to 4.3¢/kWh.
- When spot prices are lower than 4.3¢/kWh, OEFC will receive a payment from the IMO equal to the difference between spot price and 4.3¢/kWh based on the quantity consumed. The IMO will increase the amount payable by the distributors for amounts consumed by a corresponding amount up to 4.3¢/kWh.

The Fund will receive a large proportion of its funding from the portion of the Market Power Mitigation Agreement (MPMA) rebate paid by OPG that is attributable to the low volume and designated consumers. The initial $75 consumer refund for the May 1, 2002 to November 30, 2002 period was funded from OPG's MPMA rebate liability.

Net costs were higher than originally expected due to higher-than-expected prices arising from a long and severe winter. Program costs were also higher than initially expected due to higher costs to maintain the contractual rights of retailers. Annual results for the Fund are expected to improve as new supply comes on-line and reduces electricity prices.

The financial statements reflect the net expense of the Fund for this fiscal year. More information on the Fund can be found in Note 13 to the Financial Statements.

## Objectives for 2003-04

OEFC's activities for 2003-04 will be focused on the following corporate objectives:

- Continue to perform borrowing, risk management, cash management, banking and accounting services as required in managing and retiring the outstanding debt and derivative contracts of the former Ontario Hydro;
- Assist in the implementation of the government's electricity policy decisions and coordinate economic and financial issues related to the industry. This includes management of the Electricity Consumer Price Protection Fund, managing financial relationships with the successor companies of Ontario Hydro (Hydro One, Ontario Power Generation Inc. and the Independent Electricity Market Operator) and assisting the Ministry of Energy and the Ministry of Finance in analyzing and implementing new supply initiatives, such as the temporary generation initiatives for the summer and fall of 2003;
- Continue negotiating revisions to the non-utility generator (NUG) contracts to ensure that the contracts are consistent with the competitive market. Develop and implement the necessary infrastructure to manage, in a cost-effective and prudent manner, the NUG contracts and related exposures and their integration into the power market administered by the Independent Electricity Market Operator (IMO); and
- Discharge OEFC's liability to the nuclear decommissioning fund related to generating stations of the former Ontario Hydro.

# Financial Statements

**Responsibility for Financial Reporting**

**Auditor's Report**

**Consolidated Balance Sheet**

**Consolidated Statement of Revenue, Expense and Unfunded Liability**

**Consolidated Statement of Cash Flows**

**Notes to Financial Statements**

## Responsibility for Financial Reporting

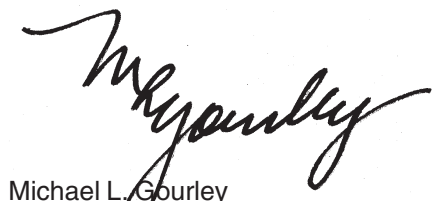
The accompanying consolidated financial statements of the Ontario Electricity Financial Corporation have been prepared in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants and are the responsibility of management. The preparation of financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods. The financial statements have been properly prepared within reasonable limits of materiality and in light of information available up to July 25, 2003.

Management maintains a system of internal controls designed to provide reasonable assurance that the assets are safeguarded and that reliable financial information is available on a timely basis. The system includes formal policies and procedures and an organizational structure that provides for appropriate delegation of authority and segregation of responsibilities. Internal Audit Services of the Ministry of Finance independently evaluates the effectiveness of these internal controls on an ongoing basis and reports its findings to management and the Audit Committee of the Board of Directors.

The Board of Directors, through the Audit Committee, is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal controls. The Audit Committee meets periodically with management, the internal auditors and the external auditor to deal with issues raised by them and to review the financial statements before recommending approval by the Board of Directors.

The financial statements have been audited by the Provincial Auditor. The Provincial Auditor's responsibility is to express an opinion on whether the financial statements are fairly presented in accordance with accounting principles recommended for governments by the Canadian Institute of Chartered Accountants. The Auditor's Report, which appears on the following page, outlines the scope of the Auditor's examination and his opinion.

On behalf of Management:



Michael L. Gourley
Vice-Chair and Chief Executive Officer

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

***Auditor's Report***

To the Ontario Electricity Financial Corporation
and to the Minister of Finance

I have audited the consolidated balance sheet of the Ontario Electricity Financial Corporation as at March 31, 2003 and the consolidated statements of revenue, expense and unfunded liability and of cash flows for the year then ended. These financial statements are the responsibility of the Corporation's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Corporation as at March 31, 2003 and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles recommended for governments by the Canadian Institute of Chartered Accountants.

Toronto, Ontario
July 25, 2003

Erik Peters, FCA
Provincial Auditor

**Ontario Electricity Financial Corporation**
Consolidated Balance Sheet
as at March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents (Note 5) | $ 3 | $ 23 |
| Accounts receivable | 248 | 292 |
| Interest receivable | 31 | 106 |
| Current portion of notes receivable (Note 7) | 651 | 443 |
| | 933 | 864 |
| Payments-in-lieu of tax receivable (Note 12) | 218 | 236 |
| Due from Province of Ontario (Note 6, 12) | 351 | 524 |
| Notes and loans receivable (Note 7) | 12,337 | 14,949 |
| Deferred debt costs | 673 | 905 |
| | $ 14,512 | $ 17,478 |
| **LIABILITIES** | | |
| Current Liabilities | | |
| Accounts payable | $ 210 | $ 442 |
| Interest payable | 556 | 659 |
| Short-term notes payable (Note 8) | 3,413 | 3,996 |
| Current portion of long-term debt (Note 8) | 1,665 | 2,548 |
| | 5,844 | 7,645 |
| Long-term debt (Note 8) | 21,752 | 22,820 |
| Power purchase contracts (Note 10) | 4,125 | 4,286 |
| Nuclear funding liability (Note 11) | 2,974 | 2,812 |
| | 34,695 | 37,563 |
| **UNFUNDED LIABILITY** (Note 4, 12) | (20,183) | (20,085) |
| Contingencies and guarantees (Note 14) | | |
| | $ 14,512 | $ 17,478 |

Approved on behalf of the Board of Directors:

Bob Christie
Chair

Michael L. Gourley
Vice-Chair

*See accompanying notes to financial statements*

## Ontario Electricity Financial Corporation

Consolidated Statement of Revenue, Expense and Unfunded Liability
for the Year Ended March 31, 2003
($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **REVENUE** | | |
| Debt retirement charge (Note 1) | **$ 889** | $ - |
| Revenue pool residual (Note 1) | **24** | 1,296 |
| Payments-in-lieu of tax (Note 12) | **711** | 387 |
| Interest | **964** | 1,028 |
| Power sales (Note 10) | **635** | 815 |
| Net reduction of power purchase contracts (Note 10) | **161** | - |
| Electricity sector dedicated income (Note 6, 12) | **197** | - |
| Gain on sale of Hydro One notes (Note 7) | **206** | - |
| Other | **10** | 18 |
| Total Revenue | **3,797** | 3,544 |
| **EXPENSE** | | |
| Interest - short-term debt | **147** | 113 |
| Interest - long-term debt | **1,867** | 2,223 |
| Interest on nuclear funding liability (Note 11) | **162** | 153 |
| Amortization of deferred charges | **105** | 140 |
| Electricity Consumer Price Protection Fund (Note 13) | **665** | - |
| Power purchases (Note 10) | **786** | 815 |
| Debt guarantee fee | **147** | 153 |
| Operating | **16** | 16 |
| Total Expense | **3,895** | 3,613 |
| Deficiency of revenue over expense | **98** | 69 |
| Unfunded Liability, beginning of period | **20,085** | 20,016 |
| Unfunded Liability, end of period | **$ 20,183** | $ 20,085 |

*See accompanying notes to financial statements.*

## Ontario Electricity Financial Corporation

Consolidated Statement of Cash Flows

for the Year Ended March 31, 2003

($ Millions)

| | 2003 | 2002 |
|---|---|---|
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | |
| Deficiency of revenue over expense | $ 98 | $ 69 |
| Adjustments for: | | |
| Amortization of deferred charges | (105) | (140) |
| Net reduction of power purchase contracts (Note 10) | 161 | - |
| Interest on nuclear funding liability (Note 11) | (162) | (153) |
| Payments-in-lieu of tax receivable | (18) | (48) |
| Net change in other balance sheet accounts | 69 | (89) |
| Net cash required by (provided from) operations | 43 | (361) |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Long-term debt issues | 967 | 1,123 |
| Less long-term debt retired | 2,775 | 3,826 |
| Long-term debt retired (issued), net | 1,808 | 2,703 |
| Short-term debt retired (issued), net | 583 | (1,426) |
| Sale of notes receivable (Note 7) | (1,878) | - |
| Repayment of notes receivable | (536) | (540) |
| Net cash required by (provided from) financing activities | (23) | 737 |
| Increase (decrease) in cash and cash equivalents | (20) | (376) |
| Cash and cash equivalents, beginning of year | 23 | 399 |
| Cash and cash equivalents, end of year | $ 3 | $ 23 |
| Interest paid during the year and included in deficiency of revenue over expense | $ 2,117 | $ 2,411 |

*See accompanying notes to financial statements.*

# Ontario Electricity Financial Corporation
# Notes to Financial Statements

## 1. Restructuring of the Ontario Electricity Industry

Effective April 1, 1999, pursuant to the *Electricity Act, 1998*, Ontario Hydro was continued as a corporation without share capital under the name Ontario Electricity Financial Corporation (OEFC). It is exempt from federal and provincial income taxes under paragraph 149(1)(d) of the Income Tax Act of Canada. OEFC is a Crown agency created to manage the debt and administer the assets, liabilities, rights and obligations of Ontario Hydro not transferred to other successor entities. These other successor entities include:

- Ontario Power Generation Inc. (OPG), an electricity generation company;
- Hydro One Inc. (Hydro One), a regulated electricity transmission and distribution business;
- Independent Electricity Market Operator (IMO), the regulated centralized independent system co-ordinator responsible for directing system operations and operating the electricity market; and
- Electrical Safety Authority (ESA), which performs a regulatory function related to electrical inspections.

On April 1, 1999, the respective business units, including assets, liabilities, employees, rights and obligations of the former Ontario Hydro, were transferred to OPG and Hydro One (and their subsidiaries) and the IMO for $8.5 billion, $8.6 billion and $78 million respectively in exchange for debt payable to OEFC. On the same day, the Province exchanged equity of $5,126 million and $3,759 million in OPG and Hydro One respectively for debt payable to OEFC.

OEFC debt, liabilities and associated financing costs will be repaid from interest on notes receivable from the Province and successor entities, and, as provided under the *Energy Competition Act, 1998*, from dedicated electricity revenues in the form of payments-in-lieu (PILs) of corporate income, capital and property taxes made by the successor entities and municipal electric utilities. Any residual debt will be serviced through a Debt Retirement Charge (DRC) to be paid by electricity consumers after open access at a rate of 0.7 cents per kilowatt hour in most Ontario communities. Until open access on May 1, 2002, OEFC continued to be a party to a revenue-allocation agreement among successor entities and was entitled to the forecast residual amount in the revenue pool after allocations to OPG, Hydro One and the IMO are paid.

## 2. Summary of Significant Accounting Policies

**Basis of Accounting**

As OEFC is a government organization, these financial statements are prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants.

**Measurement Uncertainty**

Uncertainty in the determination of the amount at which an item is recognized in the financial statements is known as measurement uncertainty. Such uncertainty exists when it is reasonably possible that there could be a material variance between the recognized amount and another reasonably possible amount, as there is whenever estimates are used. Measurement uncertainty in these financial statements exists in the estimated amount for the Electricity Consumer Price Protection Fund, the valuation of the power purchase contracts and the estimated defeasance date for OEFC's obligations. Estimates are based on the best information available at the time of preparation of the financial statements and will be updated annually to reflect new information as it becomes available.

**Consolidation**

These financial statements include the residual accounts of OEFC's wholly owned subsidiary, Ontario Electricity Pension Services Corporation (see Note 3).

**Deferred Debt Costs**

Deferred debt costs includes the unamortized amounts related to unrealized foreign exchange gains or losses resulting from the translation of long-term debt issued in foreign currencies and discounts, premiums or commissions arising from the issuance of debt or the acquisition of debt prior to maturity. These costs are amortized to operations over the life of the underlying debt.

**Revenue Recognition**

Revenues are recognized in the period in which they are earned.

**Foreign Currency Translation**

Debt is composed of short-, medium- and long-term bonds, notes and debentures. Debt denominated in foreign currencies that have been hedged is recorded at the Canadian dollar equivalent using the rates of exchange established by the terms of the hedge agreements. Other foreign currency debt, liabilities and assets are translated to Canadian dollars at period-end rates of exchange and any exchange gains or losses are deferred and amortized over the remaining term to maturity.

**Power Purchase Contracts**

The power purchase contracts liability is valued on a discounted cash-flow (DCF) basis. Periodic revaluations of this liability will give rise to changes in the estimated cost of the contracts and will be amortized to operations over a maximum 10-year period.

## 3. Ontario Electricity Pension Services Corporation

OEFC was the administrator of the Ontario Electricity Financial Corporation Pension Plan and Fund. It was responsible for negotiating an agreement with each of the successor corporations for the division and transfer of the assets and liabilities of the OEFC pension plan to the pension plans of the successor corporations. The Ontario Electricity Pension Services Corporation, (OEPSC), a wholly owned subsidiary of OEFC, acted as agent for OEFC to carry out the required administrative, investment and other responsibilities of the OEFC Pension Plan and Fund.

OEPSC made application to the Superintendent of Financial Services for Ontario for approval to transfer all of the assets of the OEFC Pension Plan to the pension plans of the four successor operating entities. The Superintendent agreed to the transfer on June 6, 2001. With the exception of certain records and assets of nominal value, all pension fund assets were transferred to the pension plans of successor corporations on June 29, 2001. As OEPSC's functions have been completed, OEFC is in the process of winding up the company.

## 4. Economic Dependence

OEFC does not have its own credit rating and is, therefore, dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation. It is also dependent on the long-term plan to defease the unfunded liability described in Note 12. Based on the Province's support in refinancing maturing debt and the long-term plan, OEFC is considered a going concern.

## 5. Cash and Cash Equivalents

Cash and cash equivalents includes cash on deposit and highly liquid investments with maturities of less than three months. They are recorded at cost, which approximates current market value.

## 6. Due from Province of Ontario

The Province has committed to dedicate the combined net income of OPG and Hydro One in excess of the Province's financing cost of its investment in its electricity subsidiaries to OEFC. In the year ended March 31, 2003, OPG and Hydro One earned an aggregate amount of $717 million, $197 million in excess of the Province's $520 million financing cost of its investment. In 2001-02, the aggregate earnings of the subsidiaries did not exceed the Province's financing cost. The $197 million amount has been reflected as income in OEFC. In July 2002, the Province paid $370 million to OEFC towards the outstanding balance.

## 7. Notes and Loans Receivable

($ millions)

| | Maturity date | Interest rate | Interest payable | March 31, 2003 | March 31, 2002 |
|---|---|---|---|---|---|
| Province of Ontario | 2039 - 2041 | 5.85 | Monthly | $ 8,885 | $ 8,885 |
| OPG | 2005 - 2011 | 5.44 to 6.65 | Semi-annually | 3,200 | 3,200 |
| Hydro One | 2003 | 5.4 to 13.5 | Semi-annually | 651 | 2,972 |
| IMO | 2009 | 7.90 | Semi-annually | 78 | 78 |
| | | | | 12,814 | 15,135 |
| Less: Current portion of notes receivable | | | | 651 | 443 |
| | | | | 12,163 | 14,692 |
| Loans receivable from non-utility generators (NUGs) (See Note 10) | | | | 174 | 257 |
| | | | | **$ 12,337** | **$ 14,949** |

OEFC has agreed with OPG and IMO not to sell notes owing from these successor entities without their prior approval.

On March 5, 2003, with the prior approval of Hydro One, OEFC completed the sale of $1,878 million (face value) of Hydro One notes. OEFC realized a gain of $206 million on the sale as interest rates payable on the notes were above market interest rates.

In 2002, OEFC had agreed with OPG to defer principal payments of $200 million originally due in March and September, 2002 until December 2004. These maturities totalling $200 million have been further deferred until December 2006. In addition, OEFC has agreed with OPG to defer principal repayments totalling $500 million originally due in the period March 2003 to September 2004. The new maturity dates on these notes have been extended until March 2005 to September 2006.

## 8. Debt

Debt at March 31, 2003 is set out below by maturity and by currency of repayment, expressed in Canadian dollars.

| ($ millions) Currency | Canadian Dollar | U.S. Dollar | Japanese Yen | 2003 Total | 2002 Total |
|---|---|---|---|---|---|
| Maturing in: | | | | | |
| 1 year | 4,781 | 232 | 65 | 5,078 | 6,544 |
| 2 years | 3,250 | — | — | 3,250 | 1,666 |
| 3 years | 1,000 | 425 | — | 1,425 | 3,250 |
| 4 years | 119 | — | — | 119 | 1,000 |
| 5 years | 389 | 1,570 | — | 1,959 | 119 |
| 1-5 years | 9,539 | 2,227 | 65 | 11,831 | 12,579 |
| 6-10 years | 6,178 | 1,489 | — | 7,667 | 8,237 |
| 11-15 years | 648 | — | — | 648 | 1,843 |
| 16-20 years | 3,678 | — | — | 3,678 | 2,702 |
| 21-25 years | 2,077 | — | — | 2,077 | 3,037 |
| 26-50 years | 929 | — | — | 929 | 966 |
| **Total** | **$ 23,049** | **$ 3,716** | **$ 65** | **$ 26,830** | **$ 29,364** |

The effective rate of interest on the debt portfolio is 6.78 per cent (March 2002 - 6.96 per cent) before considering the effect of derivative instruments used to manage interest rate risk. The longest term to maturity is to October 17, 2031. Total foreign currency denominated debt at March 31, 2003 was $3.8 billion (March 2002 - $3.6 billion), of which $2.6 billion or 67.7 per cent (March 2002 - $1.9 billion or 52.8 per cent) was fully hedged to Canadian funds. Bonds and notes payable are either held, or guaranteed as to principal and interest, by the Province as set out below:

| | March 31, 2003 | | | March 31, 2002 | | |
|---|---|---|---|---|---|---|
| ($ millions) | Held by the Province | Guaranteed by the Province | Total | Held by the Province | Guaranteed by the Province | Total |
| Short-term debt | 3,413 | — | 3,413 | 3,996 | — | 3,996 |
| Current portion of long-term debt | 350 | 1,315 | 1,665 | 48 | 2,500 | 2,548 |
| Long-term debt | 9,791 | 11,961 | 21,752 | 9,173 | 13,647 | 22,820 |
| **Total** | **$ 13,554** | **$ 13,276** | **$ 26,830** | **$ 13,217** | **$ 16,147** | **$ 29,364** |

Fair value of debt issued approximates amounts at which debt instruments could be exchanged in a current transaction between willing parties. In valuing the OEFC's debt, fair value is estimated using discounted cash flows and other valuation techniques and is compared to public market quotations where available. These estimates are affected by the assumptions made concerning discount rates and the amount and timing of future cash flows.

The estimated fair value of OEFC debt at March 31, 2003 is $31.2 billion (March 2002 - $32.8 billion). This is higher than the book value of $26.8 billion (March 2002 - $29.4 billion) because current interest rates are generally lower than the interest rates at which the debt was issued and because of exchange rate movements. The fair value of debt does not reflect the effect of related derivative contracts.

## 9. Risk Management and Derivative Financial Instruments

OEFC employs various risk management strategies and operates within strict risk exposure limits to ensure exposure to risk is managed in a prudent and cost-effective manner. A variety of strategies are used, including the use of derivative financial instruments ("derivatives"). Derivatives are financial contracts, the value of which is derived from underlying instruments. OEFC uses derivatives for the purpose of hedging and to minimize interest costs. Hedges are created primarily through swaps, which are legal arrangements under which OEFC agrees with another party to exchange cash flows based upon one or more notional amounts during a specified period. This allows OEFC to offset its existing obligations and thereby effectively convert them into obligations with more desirable characteristics. Other derivative instruments used by OEFC include forward foreign exchange contracts, forward rate agreements, futures and options.

Foreign exchange or currency risk is the risk of debt servicing costs and principal payments varying due to fluctuations in foreign exchange rates. To minimize currency risk, OEFC uses derivative contracts to convert foreign currency cash flows into Canadian dollar denominated cash flows. The current policy allows unhedged foreign currency cash flows to reach a maximum of 20 per cent of total debt. At March 31, 2003, 6.3 per cent (March 2002 - 7.5 per cent) of this debt was unhedged, with most of the currency exposure to US dollars.

Floating rate risk is the exposure of OEFC to changes in short-term interest rates over a 12-month period. OEFC reduces its exposure to rate changes by entering into derivative contracts that convert floating interest payments to fixed interest payments. The current policy allows unhedged floating rate debt, net of liquid reserves, to reach a maximum of 20 per cent of total debt. At March 31, 2003, OEFC's floating rate debt as a percentage of total debt was 13.5 per cent (March 2002 - 9.8 per cent).

Liquidity risk is the risk that OEFC will not be able to meet its current short-term financial obligations. As explained in Note 4, OEFC is dependent on the Province to borrow and on-lend the funds required to refinance maturing debt and to cover any cash shortfalls in the Corporation.

The table below presents a maturity schedule of OEFC's derivatives, by type, outstanding at March 31, 2003, based on the notional amounts of the contracts. Notional amounts represent the volume of outstanding derivative contracts and are not indicative of credit risk, market risk or actual cash flows.

**Derivative Portfolio Notional Value**
**($ millions)**
**As at March 31, 2003**

| Maturity in Fiscal Year | 2004 | 2005 | 2006 | 2007 | 2008 | 6-10 Years | Over 10 Years | Total 2003 | Total 2002 |
|---|---|---|---|---|---|---|---|---|---|
| Cross-currency swaps | 1,046 | - | 425 | - | 496 | 388 | - | 2,355 | 1,528 |
| Interest rate swaps | 2,214 | 292 | 1,515 | 132 | 1,246 | 158 | 1,486 | 7,043 | 6,420 |
| Forward foreign exchange contracts | 720 | - | - | - | - | - | - | 720 | 974 |
| Other[1] | - | 50 | - | - | - | - | - | 50 | 250 |
| Total | $ 3,980 | 342 | 1,940 | 132 | 1,742 | 546 | 1,486 | 10,168 | $ 9,172 |

[1]Other includes swaptions and forward rate agreements.

The use of derivatives introduces credit risk, which is the risk of a counterparty defaulting on contractual derivative obligations in which OEFC has an unrealized gain. The table below presents the credit risk associated with the derivative financial instrument portfolio, measured through the replacement value of derivative contracts, at March 31, 2003.

| Credit Risk Exposure ($ millions) | March 31, 2003 | March 31, 2002 |
|---|---|---|
| Gross credit risk exposure[1] | 4,167 | 4,569 |
| Less: Netting[2] | (4,293) | (4,709) |
| Net credit risk exposure[3] | $ (126) | $ (140) |

Notes:
1 Gross credit risk exposure includes credit exposure on swaps, options, futures, forward rate agreements and forward foreign exchange agreements.
2 Master agreements provide for close out netting as contracts do not have coterminous settlement dates.
3 Total exposure to counterparties with positive exposure (meaning that counterparties owed OEFC) was $202 million (March 2002 - $111 million) and the total exposure to counterparties with negative exposure (meaning that OEFC owed the counterparties) was $328 million (March 2002 - $251 million) for a total net credit exposure of ($126) million (March 2002 - ($140) million).

OEFC manages its credit risk exposure from derivatives by, among other things, dealing only with high credit quality counterparties and regularly monitoring compliance to credit limits. In addition, OEFC enters into contractual agreements (master agreements) that provide for termination netting and, if applicable, payment netting with virtually all of its counterparties. Gross credit risk exposure represents the loss OEFC would incur if every counterparty to which OEFC had credit risk exposure were to default at the same time and the contracted netting provisions were not exercised or could not be enforced. Net credit risk exposure is the loss including the mitigating impact of these netting provisions.

As at March 31, 2003, OEFC's most significant concentrations of credit risk were with three A+ or higher rated counterparties, each of which represented more than 10 per cent of the Net Credit Risk Exposure. The net cost to OEFC, if it had to replace all of the swap contracts with these three counterparties is $23 million, $62 million and $85 million, respectively.

## 10. Power Purchase Contracts

Power purchase agreements and related loan agreements were entered into by Ontario Hydro with non-utility generators (NUGs) located in Ontario. As the continued Ontario Hydro, OEFC is the counterparty to these contracts. These contracts, expiring on various dates to 2048, provide for the purchase of power at prices that are expected to be in excess of the market price. Since open access on May 1, 2002, this power has been sold at market prices that generally have been less than cost. Prior to open access, power purchased from NUGs was resold at cost to the revenue pool managed by OPG.

During the year, OEFC purchased power in the amount of $786 million (2002 - $815 million) and sold this power for $635 million (2002 - $815 million). Effective April 18, 2002, the NUG Contract Management Agreement between Enron Canada Corporation and OEFC was assigned to UBS Warburg Energy (Canada) Ltd. Annual fees include both a fixed fee of approximately $750,000 plus a variable fee based on performance in minimizing losses under NUG power purchase agreements that amounted to $10 million (2002 - $ nil).

The NUG liability had been valued at $4,286 million on a discounted cash-flow (DCF) basis since Ontario Hydro was continued as OEFC on April 1, 1999. Since the electricity market was opened in this fiscal year, the DCF model was updated as of March 31, 2003 which reduced the estimated liability from $4,286 million to $3,745 million. The revaluation change will be amortized to operations over a 10-year period. In addition, each year, interest at the DCF rate is added to the liability and the estimated in-year loss in the DCF model is deducted from the liability as set out below:

**Statement of NUG Liability**
($ millions)

| | | |
|---|---|---|
| NUG Liability, March 31, 2002 | | $ 4,286 |
| Interest charged during the year | | 253 |
| Deduct estimated in-year loss | | (372) |
| Revaluation as of March 31, 2003 | | (422) |
| Sub total | | 3,745 |
| Add: Unamortized Revaluation Changes | | |
| Gross Revaluation | 422 | |
| Accumulated Amortization | (42) | 380 |
| | | $ 4,125 |

Loans to NUGs decreased during the period by a net $83 million to $174 million at March 31, 2003 (March 31, 2002 - $257 million), primarily due to principal repayments.

## 11. Nuclear Funding Liability

OEFC as the continued Ontario Hydro received a liability in the amount of $2,378 million representing nuclear waste management and asset removal liabilities that were incurred prior to April 1, 1999. In March 2002, the Province and OPG entered into the Ontario Nuclear Funds Agreement (ONFA) to establish, fund and manage segregated funds to ensure that sufficient funds are available to pay for costs of nuclear waste management and station decommissioning. The OEFC liability will be directed to the Decommissioning Custodial Fund, which is expected to be established later in 2003.

The Board of Directors of OEFC approved the funding of the Decommissioning Custodial Fund over the next four years, thus discharging the nuclear funding liability. OEFC reflected the nuclear funding liability at April 1, 1999 and has been accruing interest annually at an estimated 5.75 per cent since that time. At March 31, 2003, this estimated accrued interest was included in the liability amount of $2,974 million (2002 - $2,812 million). The calculation of the interest rate is still under negotiation between the parties, but is expected to be finalized later in 2003. The impact of the finalization of the interest rate calculation is not expected to result in a material difference to the liability balance.

## 12. Unfunded Liability

The opening unfunded liability of $19.4 billion at April 1, 1999 was composed of $38.1 billion in liabilities assumed from old Ontario Hydro less the value of assets transferred to OEFC at April 1, 1999 including $17.2 billion in notes receivable and $1.5 billion in loans receivable and other assets. A long-term plan was established to retire OEFC liabilities from within the electricity sector. The Plan includes cash flows from the following sources as at **April 1, 1999**:

**Notes receivable** from the Province of $8.9 billion, OPG of $3.4 billion, Hydro One of $4.8 billion and IMO for $0.1 billion for a total of $17.2 billion as a result of the transfer of assets to successor companies,

**Payments-in-lieu** of corporate income, property and capital taxes made by OPG, Hydro One and municipal electric utilities,

a **Debt Retirement Charge** to be paid by ratepayers based on the consumption of electricity, and

**Electricity Sector Dedicated Income** - The combined net income of OPG and Hydro One in excess of the Province's cost of its investment in its electricity subsidiaries will be allocated to the retirement of OEFC's debt.

The long-term plan supports a current estimate that OEFC's obligations will likely be defeased in 2012.

## 13. Electricity Consumer Price Protection Fund

On November 11, 2002, the Province announced a program designed to provide electricity to low volume and designated consumers at a fixed price of 4.3 cents per kilowhatt-hour (kWh) until at least 2006, retroactive to May 1, 2002. Power generators continue to receive the free market price as set in the IMO electricity market. The program is administered through the Electricity Consumer Price Protection Fund (ECPPF) managed by OEFC.

During periods where the average price of electricity is greater than the fixed rate of 4.3 cents per kWh, the balance is funded by the ECPPF. Conversely, the ECPPF will receive funds during periods where the average price of electricity is lower than the fixed rate of 4.3 cents per kWh. Expenditures from the Fund amounting to $1,461 million in the year were reduced by a portion of the rebate paid by OPG under the Market Power Mitigation Agreement (MPMA) in the amount of $796 million leaving a net cost in OEFC of $665 million.

## 14. Contingencies and Guarantees

OEFC is involved in various legal actions arising out of the ordinary course and conduct of business, some of which relate to the former Ontario Hydro prior to the establishment of OEFC on April 1, 1999. Under the terms of the April 1, 1999 restructuring of Ontario Hydro, each successor entity (OPG, Hydro One, ESA and IMO, and their respective subsidiaries) is responsible for any liabilities relating to those operations of the former Ontario Hydro that were transferred to it. In the event any such liabilities remained with OEFC, the successor entity is also required to indemnify OEFC. With respect to legal actions relating to operations of Ontario Hydro that were retained by OEFC, the outcome and ultimate disposition of these legal actions is not determinable at this time. Accordingly, no provision for the above actions is reflected in the financial statements. Settlements of these contingencies, if any, will be reflected in the period in which settlement occurs.

Subject to a $10 million and $20 million deductible respectively, OEFC has agreed to indemnify Hydro One and OPG with respect to any adverse claim to title to any asset, right or thing transferred or intended to be transferred to the companies at April 1, 1999 and any failure of the transfer order to transfer such assets, rights or things and with respect to payment to or from or other dealing with any equity account of Ontario Hydro, including certain related litigation. The Province of Ontario has guaranteed any liability arising from these indemnifications.

OEFC is contingently liable under guarantees given to third parties that have provided long-term financing to certain independent power producers in connection with the power purchase agreements described in Note 10. These guarantees total approximately $113 million at March 31, 2003 (2002 - $124 million).

# Corporate Governance

## The Board of Directors

| | |
|---|---|
| **Bob Christie** | Chair and Deputy Minister of Finance.<br>[Appointed from September 2000 to September 2006] |
| **Michael L. Gourley** | Vice-Chair and Chief Executive Officer, Vice-Chair and Chief Executive Officer of the Ontario Financing Authority.<br>[Appointed from July 2002 to June 2005] |
| **Brian FitzGerald** | Fellow of the Canadian Institute of Actuaries.<br>[Appointed from March 2003 to March 2004] |
| **Bryne Purchase** | Deputy Minister, Ministry of Energy.<br>[Appointed from April 2001 to March 2004] |
| **Tom Sweeting** | Assistant Deputy Minister, Office of the Budget and Taxation, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Bruce Macnaughton** | Director, Pension and Income Security Policy Branch, Ministry of Finance.<br>[Appointed from April 2001 to March 2004] |
| **Robert Siddall** | Chair, OEFC Audit Committee, Provincial Controller, Ministry of Finance.<br>[Appointed from November 2002 to November 2005] |
| **Karen Sadlier-Brown** | Assistant Deputy Minister, Corporate and Electricity Finance Division, Ontario Financing Authority.<br>[Appointed from July 2003 to July 2006] |

## Corporate Governance

Appointed by the Lieutenant Governor in Council, the Board of Directors is responsible for supervising OEFC's business. OEFC retains services from the Ontario Financing Authority (OFA) and the Ministry of Finance to carry out its daily operations. The Board of Directors meets at least quarterly. It monitors OEFC's financial performance and approves OEFC's financial policies and its business plan for each year.

The Minister of Finance reviews and approves the OEFC's annual business plan, which contains long- and short-term objectives and reports on accomplishments for the preceding year. In keeping with the government's Agency Establishment and Accountability Directive, once every three years the Minister of Finance recommends the OEFC business plan to Management Board of Cabinet for approval.

The OEFC Audit Committee supports the Board of Directors with the review and recommendation for approval of OEFC's financial statements. The Audit Committee also recommends the annual internal audit plan and reviews the findings of the internal auditors regarding the adequacy of internal controls. The OEFC Audit Committee has recommended to the Board that the legislation regarding the timing of the delivery and tabling of the Corporation's annual report, including audited financial statements, be made consistent with the timing of the Province's Public Accounts, because of the relationship of OEFC's statements to the Public Accounts.

OEFC's Board also has a NUG Committee. This committee makes decisions concerning OEFC's Power Purchase Agreements. Membership includes OEFC Directors representing the Ministry of Finance and the Ministry of Energy.

## Corporate Policies

### Overview and Structure

### Board of Directors

- Reviews and approves key risk management policies.
- Supervises the management of the OEFC's debt portfolio and NUG power sales.

**Audit Committee**

- Oversees the financial reporting process on behalf of the Board of Directors.
- Reviews key risk management policies, internal audit reports and the financial statements.

### Management Committees

**Risk Management Committee**

- Reviews daily market updates and outlook.
- Reviews current borrowing, investing and debt management positions and strategies.

**Borrowing Strategy Committee**

- Reviews economic conditions, fiscal plan and capital markets outlook.
- Reviews borrowing and debt management activities and management reports, cash flows and the annual financing charge forecast.
- Reviews operational limits and procedures related to financial operations.
- Approves amendments and exceptions to approved risk management policies and procedures.
- Approves risk management policies for recommendation to the Board of Directors.

### Risk Control Division

- Monitors, measures and assesses market risks and performance associated with borrowing and NUG power sales.
- Develops and updates risk management policies in response to best industry practices in an evolving business environment and underlying risks of the programs and compliance with all policies on a timely basis to senior management and the Board of Directors.
- Monitors compliance with Board-approved policies, limits and procedures, and monitors portfolio performance and trends.
- Assesses counterparty credit risk and manages rating agency relations.

## Risk Management Policies and Procedures for Borrowing and Debt Management

The OFA incurs credit, market, operational and liquidity risks for OEFC in managing the debt of OEFC. These risks are managed in accordance with risk management policies approved by the OEFC Board of Directors. The Board and management committees establish and approve risk management policies and monitor OEFC's compliance with the policies and the performance of the OFA's OEFC-related capital market activities.

OEFC has a number of policies in place to mitigate financial risks: market risk, credit risk, operational risk and risks related to the use of derivatives. These policies were developed following the Group of Thirty's best practices, the guidelines and directives of regulatory bodies, such as the Office of the Superintendent of Financial Institutions of Canada, the Bank for International Settlements (BIS), and consulting with Canadian bank representatives on their risk management practices.

With the advent of the electricity market and the exposures inherent in the management of the NUGs contracts and related transactions, policies specifically addressing these exposures were recommended to the Board of Directors and approved. These policies and associated procedures will be used to develop and implement an infrastructure for monitoring and assessing NUG-related exposures.

### Market Risk

- Market Risk is the risk of financial loss attributable to changes in the values of financial indices including interest rates, credit spreads, foreign exchange rates and liquidity condition.
- This policy provides a framework for borrowing and integrates several aspects dealing with the management of market risk.
    - Foreign Exchange Exposure Limit - OEFC's exposure to unhedged foreign currencies is limited to 20 per cent of outstanding debt. This limit will be reduced to five per cent as soon as feasible and prudent. Foreign exchange exposures are limited to Group of Seven currencies and the Swiss franc or the equivalent currencies (i.e., the Euro).
    - Floating Rate Exposure - OEFC is limited to a maximum floating rate exposure of 20 per cent of debt.
    - Risk Management Loss Limits - The total amount of financial losses resulting from market risk and the default of counterparties shall not exceed a debt cost loss limit specified by the Board of Directors. Additionally, the CEO establishes a debt management trigger level to ensure that losses will not reach the debt cost loss limit. The trigger level is included in the Annual Financing and Debt Management Plan.
    - Risk Measurement - OEFC identifies and quantifies exposures to market risk in its Annual Financing and Debt Management Plan to ensure that risk exposures and losses remain within the approved exposure and loss limits. Exposure to market, credit and liquidity risk is measured daily.
    - Debt Maturity Profile - When issuing new debt on behalf of OEFC, the OFA will aim for a smooth debt maturity profile to diversify the interest rate risk for the refinancing of maturing and floating rate debt.

### Credit Risk

Credit risk is risk that a counterparty does not meet, or defaults on its obligations. Credit risk arises when the OFA undertakes financial and derivative transactions on behalf of OEFC. The minimum credit rating of a counterparty for a new swap transaction is AA- and R1-mid for money market investments. The resulting exposure is capped at mark-to-market limits depending on the counterparty's credit rating and capital base.

## Operational Risk

OEFC's operational risk is managed through procedures that deal with model risk, legal risk, settlement risk and information systems risks.

**Model Risk**

OEFC's pricing models are regularly reviewed for accuracy and compliance with industry standards. OEFC's valuation of financial instruments is also reviewed regularly.

**Legal Risk**

Procedures and standards have been implemented to ensure that documentation of OEFC debt issues, debt management and money market transactions meet industry standards and is enforceable.

**Settlement Risk**

On behalf of OEFC, the OFA has established internal control procedures and systems, involved external service providers and trained its staff to ensure that transactions are settled correctly and in a timely manner, are recorded accurately, and that service providers are appropriately involved.

**Information Systems Risk**

As OEFC's service provider, on behalf of OEFC, the OFA has taken measures to protect computer systems and access to the offices of the OFA, monitoring the computer room environment, the establishment of a back-up power source, regular data back-ups, off-site storage, firewalls to protect against unauthorized network intrusions and computer virus scanning. Security is reviewed periodically and when major changes occur.

## Use of Derivatives

Derivatives are used solely to advance the objective of providing OEFC's financing and liquidity requirements in a sound and cost-effective manner. Derivatives are used to manage exposures arising from existing and planned debt, and in a manner consistent with the Annual Financing and Debt Management Plan. Risks arising from the use of derivatives are identified, monitored, evaluated and managed prudently.

## Risk Management Policies for NUG Power Sales

## Market Risk

The NUG Market Risk Policy for Electricity Risk Management provides for a framework governing the use of electricity derivatives for the program, as well as volumetric limits on the level of forward sales and financial loss limits. A key requirement for electricity forwards and other derivative contracts is OEFC's ability to price and measure the risk associated with them. The policy mandates an annual NUG risk management plan, which delineates the assumptions for the upcoming fiscal year, including economic and electricity price assumptions, base case and contingency plans for managing and diversifying risk, and supply availability assumptions. A risk assessment for all assumptions is also required.

## Credit Risk

OEFC incurs credit risk in the course of its forward transactions with counterparties in the marketplace. This policy addresses that risk through minimum credit ratings and through exposure, term-, and concentration limits. Additionally, the policy sets out requirements for documentation and enforceability. Monitoring and reporting of credit exposures and credit quality are performed by Risk Control Division.

## Supply Availability Risk

Supply Availability Risk is the risk associated with having to meet contractual obligations associated with portfolio hedging transactions through open market transactions. As with financial market activities, management of OEFC's NUGs electricity generation portfolio must assess both market and counterparty credit risks. In addition, managing these risks is further complicated by such risks as equipment breakdown, fuel availability and fuel costs, all of which could affect OEFC's ability to meet its contractual obligations through NUGs supply.

## Risk Management Reporting

At its regular quarterly meetings, the OEFC Board of Directors is informed of OEFC's activities, positions and risk exposures through three types of reports:

- CEO's report;
- Exposure and performance report; and
- Exception report provided by the Director of Risk Control, OFA.

OEFC's Annual Financing and Debt Management Plan, which indicates how OEFC risk exposures and losses will be maintained within the approved exposure and loss limits, is approved by the Board of Directors each year.

The CEO provides the Board of Directors with a progress report on the implementation of the Annual Financing and Debt Management Plan, staffing and other administrative and operational matters. The CEO also reports on OEFC's compliance with applicable government directives, and OFA Legal Counsel reports on compliance with applicable laws.

In addition, OFA Management is kept informed of OEFC's risk exposures and positions on a daily basis.

# Additional Sources of Information

## Internet

**Ontario Electricity Financial Corporation** **www.oefc.on.ca**

Provides information on OEFC's debt, the Board of Directors, and contains other related publications.

**Ontario Financing Authority (OFA)** **www.ofina.on.ca**

Provides a description of the OFA's activities, Ontario debt issues and retail products and contains publications from the OFA and the Ontario Ministry of Finance.

## Other Links

| | |
|---|---|
| Ministry of Finance | www.fin.gov.on.ca |
| Ministry of Energy | www.ene.gov.on.ca |
| Ontario Power Generation Inc. | www.opg.com |
| Hydro One Inc. | www.hydroone.com |
| Ontario Electrical Safety Authority | www.esainspection.net |
| Independent Electricity Market Operator | www.iemo.com |

## Inquiries

For general information and additional copies of this annual report, please contact:

Investor Relations, Capital Markets Division

Telephone: (416) 325-8000

E-mail: investor@oefc.on.ca

Ontario Electricity Financial Corporation

1 Dundas Street West, Suite 1400

Toronto, Ontario

M7A 1Y7

Canada

Telephone: 416-325-8000

investor@oefc.on.ca

www.oefc.on.ca

© Queen's Printer for Ontario

ISSN 1492-7543

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Gadi Mayman; Anna Strathy |
| **Cc:** | Ken Kandeepan; Mike Manning |
| **Subject:** | RE: Updated Materials |
| **Date:** | Tuesday, October 03, 2017 11:02:18 PM |

Hi Gadi,

I was just noting the "was" typo correction too. And agreed on the need for a comma.

Ron

**From:** Gadi Mayman
**Sent:** October-03-17 10:57 PM
**To:** Anna Strathy
**Cc:** Ken Kandeepan ; Ronald Kwan ; Mike Manning
**Subject:** Re: Updated Materials

In our paragraph near the end of the government response, the second mention of FAO should have a "the" in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don't have numbers in their title?)

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word "way" instead of "was". In the first paragraph, I think it reads more clearly if, in the last sentence, between "as an asset and" and "in accordance with" we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with "in accordance with the accounting definition." Since I'm being unnecessarily fussy, let me even go as far as to suggest if we do that, we could get rid of the second and in the sentence: "... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. "

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, and please let me know if you have any comments as soon as possible. Note that we'll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I'll check in with Erica's team to get an electronic copy of the final for tomorrow.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> > **Date:** October 3, 2017 at 8:57:03 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)"

<Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>

**Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>

**Subject: Updated Materials**

Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- **Please reply-all with any edits by 11:00AM**.
- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; Gadi Mayman; Ronald Kwan |
| **Subject:** | RE: Updated Materials |
| **Date:** | Wednesday, October 04, 2017 9:33:02 AM |

Hi Ken, I just spoke to Gadi and it sounds like on the "OAG suggests…" sentence in the Government Response, Deputies Thompson and Angus are discussing removing that sentence altogether, so I won't submit your suggested change when we send OFA's consolidated edits.

**From:** Anna Strathy
**Sent:** Wednesday, October 04, 2017 9:20 AM
**To:** Ken Kandeepan
**Cc:** Mike Manning ; Gadi Mayman ; Ronald Kwan
**Subject:** RE: Updated Materials

Hi Ken – just a few comments below.

**From:** Ken Kandeepan
**Sent:** Wednesday, October 04, 2017 8:42 AM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Cc:** Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: Updated Materials

Hi Anna

Agree with Ron's and Gadi's comments plus here are a few from me.

Government Response

Page 1: 4th para 2nd sentence the reference to third party experts, since the Navigant report has or will be released to the AG why not include a reference. "third party experts, including a recent report from Navigant that will be provided to the OAG, have confirmed….." At the last DM meeting on this, Deputy Imbrognu mentioned Energy lawyers were concerned that because Blakes commissioned the Navigant report, it could be caught by solicitor-client privilege, and if Energy waives that privilege, it's not clear whether anything else would be waived. The question of releasing it publicly is therefore still an open question.

Page 2: Last para, last sentence now reads as: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, which is inaccurate". Suggest revising as follows: "The OAG suggests that all of the costs of OFHP should be reflected as if they will all be borne by taxpayers, however, this treatment will not reflect the economic substance of the program since the benefits of the GA refinancing accrues to ratepayers". Hope you don't mind, I've added "however". We may want to run this by OPCD and Energy before submitting to our DMO. Do you want me to connect with Cindy and Steen? Or would you like to?

Consolidated Comments

One small suggested edit to our contribution. The third para first sentence now reads as follows: "The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets)".

Suggest that it be revised to :" The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period that better reflects the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful life of the assets).

Note the typo in “life” in the original. Thank you!
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Tuesday, October 03, 2017 9:50 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: Updated Materials

FYI attached, and please let me know if you have any comments as soon as possible.
Note that we’ll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I’ll check in with Erica’s team to get an electronic copy of the final for tomorrow.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> **Date:** October 3, 2017 at 8:57:03 PM EDT
> **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
> **Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> **Subject: Updated Materials**
>
> Hi all,
> I’ve attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.
> **Next Steps**:
> - In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a ‘Y’, please have staff add in “Please see [name of document/attachment]”. If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to ‘N’.
> - Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
> - The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
> - **Please reply-all with any edits by 11:00AM**.

- I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | RE: Updated material |
| **Date:** | Wednesday, October 04, 2017 1:34:44 PM |
| **Attachments:** | AG FHP Report - Consolidated Comments - Oct 4 1100AM TRACKED_Markup.docx |

Hi Anna,

One other sentence seems off in sequencing, after all the various edits over the past day or so.

Ron

**From:** Anna Strathy

**Sent:** October-04-17 11:35

**To:** Gadi Mayman ; Ronald Kwan ; Ken Kandeepan ; Mike Manning

**Subject:** FW: Updated material

FYI, updated versions. They didn't capture our stranded debt comments in the consolidated comments, so I'll send back a track change version.

**From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]

**Sent:** Wednesday, October 04, 2017 11:24 AM

**To:** Martin Schlaepfer (MOF) <Martin.Schlaepfer@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; William Bromm (CAB) <William.Bromm2@ontario.ca>

**Subject:** Updated material

Hi all,

Latest versions attached with all comments integrated. I have not included a clean version of the consolidated comments because I need folks to see my comments and update the chart.

For the response, there are a couple of comments left that need to be addressed. Please have staff review.

Thanks,

Dave

**David McLean**

*Executive Assistant*

*and Special Policy Advisor*

Deputy Minister's Office

Ministry of Finance

416-327-0192

david.mclean@ontario.ca

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| General | Throughout | The 8% Provincial Rebate is often referred to as a "HST rebate." The program is an 8% rebate on the consumer's pre-tax electricity charges. While this is equivalent to the provincial component of HST, the program is not a tax rebate. Tax is assessed in full and is not credited back to customers.<br><br>Suggest correcting this reference throughout the OAG report. | N |
| | Several | Label – There is no OPG Trust entity rather it is the Fair Hydro Plan Trust. This should be changed throughout the OAG report. | N |
| Key Issue | 1 | First sentence below the recommendations – implies the Province has passed legislation dictating the accounting for the transaction. This is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 2 | *"…the government's intention in creating the accounting/financing design to handle the costs of the rate reduction was to avoid affecting its fiscal plan."*<br><br>The government's intention was to provide electricity rate relief to current ratepayers, including by more fairly allocating costs for specified consumers, with the Global Adjustment (GA) cost amounts still ultimately borne by specified electricity ratepayers, as beneficiaries of those electricity system costs. | N |
| Summary of Concerns | 2 | *"Our work included interviews and a review of documentation, including emails. We received all information we requested with one exception. The Ministry of Energy signed a contract,* ***with a retainer of $500,000*** ~~*for a maximum of $500,000*~~*, to* ***provide search services and to compile emails responsive to our request.*** *At the time we completed this Special Report, the Ministry had* ***provided us with 6,940 emails and attachments, with more expected and the costs are not expected to exceed $60,000.*** ~~*still not provided us with all of its emails, which we requested on May 31, 2017.*~~*"*<br><br>Update statement with language in "bold and underlined" and remove text in "strike-out". Although the retainer agreement includes a cap of up to $500,000 as of September 27, 2017 only $41,775.75 has actually been spent. In addition, the Ministry has provided 6,940 emails and attachments as of October 3, 2017. The Ministry does not intend to spend more than $60,000 on this request. | Y |

**Commented [MD(1]:** Are we referring to the emails already provided? If so, I suggest changing this to 'N'.

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 3 | *"… so **IESO will sell its statutory right to recover the shortfall and use the proceeds of that sale to recover the shortfall*** ~~*the government needs to borrow cash to cover the shortfall*~~*"*<br><br>Updated statement with language in "bold and underlined" and remove text in "strike-out". This statement is factually incorrect in two respects. First, in its reference to "government". It is Independent Electricity System Operator (IESO) that needs to cover the shortfall. The IESO is not the "government" because IESO is not owned by the Crown, and under statute (Electricity Act, 1998) is explicitly not an agent of the Crown. Second, in its reference to "borrowing cash". IESO is not borrowing cash to cover the shortfall (except initially). IESO can sell its statutory right to recover the shortfall and use the proceeds of that sale to cover the shortfall. | N |
| Summary of Concerns, 2.0 | 3, 10 | The report concludes that as a result of the government's decision to not borrow directly in connection with GA refinancing, an additional $4 billion in interest costs will be imposed on consumers over the life of OFHP, as OPG/OPG trust must pay a higher rate of interest compared to the Province.<br><br>This $4 billion figure was sourced from the Financial Accountability Officer's (FAO) May 2017 report on OFHP; however, accumulated interest is projected to be considerably less than estimated in the FAO's May report. Total borrowing for the program has been revised down substantially since May, from $27.7 billion to $18.5 billion, and OPG's borrowing costs are now forecast to be lower than original estimates. | N |
| Summary of concerns | 4 | The first bullet on the page notes that the OFHP legislates the accounting which is factually incorrect and should be deleted. | N – Legislation – already in the report |
| Summary of Concerns | 4 and throughout | The AG report notes throughout that the Ontario Rebate for Electricity Consumers (OREC) is 8% of the OFHP's 25% bill reduction for the proxy consumer.<br><br>The 25% figure is an after-tax figure whereas the 8% figure is before-tax (i.e., 8% before tax is equivalent to 7.1% after-tax). Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| Summary of Concerns | 4 and throughout | Under OFHP, consumers of all sizes will benefit from shifting cost recovery for the Ontario Electricity Support Program (OESP) and the majority of the Rural or Remote Rate Protection (RRRP) program from electricity bills to provincial revenues.<br><br>This action is expected to lower regulatory charges for all consumers by approximately $3/MWh (or about 2% for a residential consumer). The AG report does not mention this aspect of OFHP.<br><br>Suggest including the two sentences above in the AG report and adjusting the commentary in the report accordingly such that this information about RRRP and OESP costs are reflected in the report. | N |
| Summary of Concerns | 4 and throughout | The AG report indicates on several occasions a 17% reduction in ratepayers electricity bills. However, due to the fact that the 8% OREC is a before-tax rebate and that the shifting of social programs (i.e., OESP and RRRP) to the tax-base constitutes a portion of the 25% reduction, the impact of GA refinancing on the proxy consumer's bill is about 16%.<br>Note: The breakdown is more like: 7% (OREC) + 16% (GA Refinancing) + 2% (tax-basing Ontario Electricity Support Program and Rural or Remote Rate Protection).<br><br>Suggest correcting this reference throughout the AG report. | N |
| 1.1 | 5 | ~~*"The government made a critical decision early in the process…it should not disclose the deficit incurred from this required borrowing, nor should it add to the amount the government would report as Ontario's net debt."*~~<br><br>Delete this statement. It is not a fair characterization as no deficit was incurred. The policy intent was always that electricity consumers would receive the benefits and be responsible for paying back the debt over the long term. | N |
| 1.2 | 6 | ~~Private-sector accountants, lawyers, and bankers were engaged to develop and support the plan.~~<br><br>Delete this sentence and replace with the following the following to more accurately portray the role of third party experts: "The third party experts were consulted to provide advice and ensure ~~appropriate~~ due diligence was completed." | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.2 | 6 | *"Working through ~~and around~~ the recognized risks to achieve the desired accounting results…ongoing spending on private-sector advisers had exceeded $2 million when we completed this Special Report."*<br><br>Delete reference to "around" as it is inaccurate. Government was mitigating risks not working around them. | N |
| 1.2 | 6 | The design options were not all rejected because they would show an increase in the deficit or net debt. For example, one option considered was to have the LDCs finance the difference between the amounts paid to the generators and the amounts collected from the ratepayers. This was rejected because of the inability of some of the LDCs to finance the balances. This option was detailed in an email provided to the OAG from Cindy Veinot dated February 2, 2017 at 7:02 pm. | Copy of email |
| 1.2 | 6 | Please provide a copy of the emails that support these bullets on this page. | N |
| 1.3.1 | 7 | The cumulative accounting results shown in figure 3 are not in accordance with Canadian PSAS. The reference to figure 3 and figure 3 should be deleted. | N |
| | 7 | Implication in several sections that the OFHP roll out results in a "less transparent" process. With the financing plan, similar to several jurisdictions in the U.S., and a form or securitization that is commonly used in the financial markets the impact of the plan will be transparent. Credit rating agencies, securities regulators and the public at large get full information and full reporting of the impacts of the OFHP that are visible and specific. | N |
| | 8 | *"Province shows no increase in net expense because the revenue OPG earns from charging the OPG Trust interest and administration and other fees offsets the interest expense on the amount borrowed…"*<br><br>This is not factually correct as stated. There is no explicit legislative or regulatory requirement for the revenue Ontario Power Generation (OPG) earns from charging the OPG Trust interest and fees to bear any relationship to the interest expense incurred by the Province in borrowing money for its equity infusions into OPG. | N |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 1.3.1 | 8 and Figure 3 | The OFHP costs included in the AG report (e.g., interest, debt, etc.) are higher than ENERGY's August 31 estimates (s*ee Exhibit 1 below for further detail).* ENERGY'S August 31 estimates reflect the best available information regarding the parameters that impact OFHP cost (e.g., electricity bills, consumption, etc.) and are more likely to reflect how OFHP will progress over time.<br><br>Consider including ENERGY's August 31 interest, debt and total cost estimates in the report, or, at a minimum note that ENERGY's recent estimates are significantly lower than the FAO cost estimates. | N |
| | 8 | Factual matter – AG report states the OFHP will be finalized and completed by 2045. The correct end date is 2047. | N |
| 1.3.2 | 9 | The AG report states that it is not at all certain that the electricity generators whose costs have been smoothed under OFHP will be in use to produce power in the future. Third-party expert analysis advised that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts.<br><br>The report also points out that future ratepayers do not yet owe anything until they consume electricity in the future. Electricity has always been priced according to this approach in Ontario, as currently represented through the Global Adjustment (GA) which varies based on consumption levels for Class B consumers. OFHP takes into account the best available long-term projection of Ontario electricity demand.<br><br>Suggest updating the content in the AG report to acknowledge third-party expert analysis (i.e., that the electricity generators that form the basis for GA refinancing will be able to operate after expiry of IESO contracts). | Y |
| 1.3.2 | 9 | The statement is made "*key to achieving this result is calling the 17% revenue shortfall or net expense a "regulatory asset*". This is factually incorrect. It does not matter what an item is labeled within the legislation. The accounting for the transaction will be based on Canadian Public Sector Accounting Standards. This sentence should be deleted.<br><br>As previously provided to the OAG by IESO and KPMG, the transaction is expected to result in an asset that meets the definition of an asset based on PSAS and the guidance on rate-regulated accounting in US GAAP. That analysis, in summary is: | N |

**Commented [MD(2]:** Are we referring to the Navigant report? If so, can we specify?

DRAFT

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Under Canadian PSAS, assets are defined by three characteristics: a) they embody future economic benefits (of which one is the ability to generate future cash flows); b) the entity has full control in order to access those benefits, and c) they must result from a past event.<br><br>The decision by the IESO to apply the rate-regulated rules under US GAAP does not create an inconsistency with the definition of an asset under Canadian PSAS. The shortfall which is being reported as an asset by the IESO embodies a future economic benefit based on the requirement of the specified ratepayers to pay these deferred amounts in the future. IESO has control to access those benefits either by selling the regulatory asset or by holding the asset until the payments by the specified ratepayers are received in the future. Finally, the asset results from a past event which is the payment to the generators for the generation of power.<br><br>It is important to distinguish legislating the accounting from legislating the right for the government to recover amounts from specified ratepayers in the future, based on costs incurred today. Enabling the IESO to sell the future right to recover of this shortfall from specified ratepayers provided under the *FHP Act* is not legislating the accounting. The statute does not direct the government how to account for the shortfall. The statute provides for recovery of the current shortfalls from the specified ratepayers in the future, reflecting the policy decision to have the GA refinancing borne by the specified ratepayers, and in doing so, creates an obligation on the specified ratepayers to pay an amount in the future. The obligation on the part of the specified ratepayers is a future economic benefit to the government. | |
| Summary of Concerns<br><br>3.0 | 3-4<br><br>11 | The following text should be removed from the report (p. 3-4):<br><br>~~*"The government applied a correct accounting treatment for the electricity sector's stranded debt in 1999/2000, and there is no good reason for it not to apply the same accounting treatment to the debt that will accumulate as a result of the Fair Hydro Act's rate reduction"*~~<br><br>(p. 10-11)<br><br>~~"**3.0 Historical Ontario Precedent in Proper Accounting For Electricity Costs Not Yet Being Billed to Ratepayers**~~<br><br>~~There is a precedent for Ontario electricity costs being billed to ratepayers well after they were incurred.~~<br><br>~~In 1999, the government of the day made a policy decision to restructure the Province's electricity sector. The policy decision resulted in the government becoming responsible for the former Ontario Hydro's net debt of $19.4 billion (technically referred to as "unfunded liabilities" or~~ | Y<br>Please see enclosed OEFC 2000-01 and 2002-03 Annual Reports; Ontario Hydro 1998-99 Annual Report~~OEF~~ |

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | ~~"stranded debt"). The costs that created the debt were incurred over a number of years before 1999, but ratepayers had not been billed for them at the time. Instead, starting in 2002, ratepayers began paying down the stranded debt through a "debt retirement charge" on their bills.~~<br><br>~~The collection of the debt retirement charge and the Fair Hydro future reduction recovery are similar in that both stem from government policy decisions and did not result from an independent regulatory process. As well, the payments were/will be made much later, "after the fact." However, in the 1999/2000 fiscal year, the government followed Canadian Public Sector Accounting Standards properly, and included the debt and the expenses related to it in the Province's consolidated financial statements. When the debt retirement charge was added to electricity bills, the charge to ratepayers was taken in as revenue in the Province's consolidated financial statements. This treatment allowed the government to track ratepayer costs and taxpayer costs separately, helping to ensure that only ratepayers, not taxpayers, pay for electricity services.~~<br><br>~~The same accounting should be applied to the Fair Hydro Plan rate reduction: include the debt being accumulated through the 10 years of the reduction as Provincial debt, and record interest expense on this debt as an expense in the Province's consolidated financial statements. When the clean energy adjustment is added to electricity bills, the amount charged to ratepayers can then be taken in as revenue in the consolidated financial statements, as well as be tracked separately from taxpayer expenses/revenue"~~<br><br>The report makes a comparison between the OFHP and the OEFC stranded debt. There are, however, crucial differences. The latter had already been incurred when the restructuring took place. In the case of the OFHP, the difference between what will be collected and what will be paid to generators will be set up as an asset and in accordance with the accounting definition, generates a specific revenue stream in the form of the CEA.<br><br>Also, it is important to note that the 1999 restructuring led to an "unbundling" of the electricity rate. Prior to the 1999 restructuring and 2002 market opening, there was a "bundled rate" for electricity that included cost recovery of generation and transmission costs, operating and capital – including debt costs, as well as central market operations costs. Including debt cost recovery and matching the timing of the capital cost recovery with the benefit to the ratepayer~~This wa~~is a normal rate-setting regulatory practice~~ which matched the timing of the capital cost recovery with the benefit to the ratepayer~~. The DRC represented the unbundling of a portion of the debt service costs. It effectively amortized the cost of the investments in long-lived assets (including debt incurred). | ~~C 2016-17 Annual Report~~ |

**Formatted:** Highlight

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | The OFHP GA deferral is also intended to have costs recovered from specified ratepayers over a time period to better reflect the expected lives of those assets (vs the contract lengths, that may be shorter than the expected useful like of the assets). The difference between the 1999 restructuring and the OFHP is that the DRC continued to pay down, over time, debt that had already been incurred, while under the OFHP, an asset is being created to ensure a fair allocation of electricity costs between current and future ratepayers. The intention of the OFHP is to be forward looking to ensure that ratepayers are fairly paying their share of current and future costs, while the DRC was backward looking, replacing part of a bundled rate that way already spreading the cost recovery of the debt over time.<br><br>Finally, ~~T~~the penultimate paragraph in section 3.0 notes the government, in 1999/2000, "…included debt and the expenses related to it in the Province's consolidated financial statements". This statement is incorrect. The recording of the stranded debt never resulted in an expense in the consolidated financial statements. The amount of the debt was charged directly to accumulated deficit. | |
| | 12 | Related to the above argument on the value / existence of an asset – The "substance over form"<br>The government differentiated the reductions in consumers' electricity bills that are being borne by the tax-base as a whole (i.e., 8% Rebate, certain programs to help rural customers) from those that have a long term benefit (the 17% referenced in the AG report). By establishing the deferral amounts off today's bill and charging it to future consumers, that is providing substance by ensuring future ratepayers pay their share of system costs at the right time. | N |
| | 13 | The role of the OEB and its mandate, is provided in legislation. It is not uncommon for government policy, through Regulations, to provide the ground rules over which the OEB is to preside. That is the case with the OFHP itself as the Act and the various regulations provide the direction and processes over which the OEB is to exercise oversight, review and make conclusions on submissions brought forward (rates to charge certain customer classes, basis of interest and appropriateness of fees charged to ensure they are benchmarked and reasonable, etc.). | N |
| 4.3 | 13 | The first sentence of the second paragraph states: As introduced in Section 1.3.2, the asset that the Fair Hydro Act creates is referred to as a "regulatory" or "rate-regulated" asset.<br><br>The terms regulatory and rate-regulated are not interchangeable and the sentence suggests they are. Regulatory asset is a defined term in the legislation and rate-regulated asset is an accounting concept used ~~to appropriate account for~~ by rate-regulated entities meeting the appropriate criteria. In addition, the legislation does not create an asset. The recording of any asset resulting from transactions of ~~the~~ Ontario's Fair Hydro Plan will be assessed for recognition and measurement based on Public Sector Accounting Standards (PSAS), and where appropriate other accounting guidance where PSAS is silent on the issue. Suggest this sentence be deleted. | N |

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.3 | 13 | The second paragraph states "*one of the requirements for recording a regulatory asset in the U.S. is that there must be an independent regulator…*" This statement is incomplete. The guidance in US GAAP is as follows:<br><br>*The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator* ***or by its own governing board empowered by statute or contract to establish rates that bind customers. [ASC 980-10-15-2]***<br><br>The omission of the second part of the criteria is misleading. The U.S. accounting standard was developed specifically not to preclude the application of rate regulated accounting by government utilities where the rate regulator would not necessarily be viewed as independent. [FAS 71, par. 64] | FASB accounting standards |
| | 13 | The Ontario Energy Board (OEB) is an independent adjudicative/regulatory body that is responsible for setting and approving electricity rates for consumers under the *Ontario Energy Board Act* (OEBA). All regulatory bodies are enacted through legislation and OEB is not different than any other statutory body. In addition, the OFHP provides a structure for electricity rebates for consumers and does not undermine the OEB's independent adjudicative function.<br><br>Suggest correcting this reference throughout the AG report. | N |
| 4.4 | 14 | The second sentence begins "*so by legislating the accounting…*" This statement is factually incorrect. The Ontario Fair Hydro Act does not legislate the accounting. Sentence should be removed | N – Legislation – already included in report |
| 4.5 | 14 | Change was a deviation from Public Sector Accounting Standards (PSAS).<br><br>IESO Response: PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In absence of a clear position on an issue, standard accounting practice dictates that an entity should consult other accounting standards. In this case, the Independent Electricity System Operator (IESO) consulted US GAAP, the only accounting framework in North America that provides guidance on rate regulated operations. | Y<br>See hyperlink |

**Commented [MD(3]:** Are we including? Is there a hyperlink?

DRAFT

**Consolidated Feedback on**
***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| | | Paragraph 11 of the Introduction to Public Sector Accounting Standards ("Introduction") states:<br>"When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply Generally Accepted Accounting Principles, Section PS 1150."<br><br>http://www.knotia.ca/Login/ViewEmailDocument.aspx?uniqID=233710&productID=660&sGotoStr=ps+1150&pageLanguage=en | |
| 4.5 | 14 | ~~*"…that senior officials and their advisors…decided that…financial statements needed to show a regulatory asset and to include the IESO's market accounts as assets/liabilities…"*~~<br><br>Delete this passage as it is inaccurate. The IESO Board made the decision to amend its financial statements. | Y |
| 4.5 | 15 | Prior 5 years of financial statements re-stated to reflect regulatory assets and market accounts.<br><br>IESO Response: The IESO's financial statements reported regulatory assets and market accounts beginning in 2016 and at that time IESO restated financial statements for 2015. Prior to the merger of IESO and Ontario Power Authority (OPA), the OPA did include a subset of market accounts in their audited financial statements. | N |
| 4.5 | 15 | OEB did not consider IESO to be an electricity rate-regulated entity like Ontario Power Generation (OPG).<br><br>IESO response: The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (Electricity Act) and the Ontario Energy Board Act (OEBA). The IESO activities subject to rate regulation by the OEB include the following:<br>(a) IESO's expenditure, revenue requirements and fees;<br>(b) Smart metering activities; and<br>(c) A subset of market accounts. | Y |
| 4.6 | 15 | The second paragraph is factually incorrect. There is no guidance under Canadian PSAS that requires the balances recorded in IESO resulting from the Fair Hydro Plan to be eliminated upon consolidation. Sentence should be removed. | N – Public Sector Accounting Standards |

DRAFT

**Consolidated Feedback on**

***Special Report – The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value for Money***

| Section # | Page # | Comments | Supporting Evidence Attached? Y/N |
|---|---|---|---|
| 4.6 | 15 | The first sentence suggests that Ontario has created an asset under legislation which is factually incorrect. Sentence should be removed. | N – Legislation – already included in report |
| 5.0 | 17 | The last sentence of the first paragraph states, "…their opinions… do not extend to the Province's consolidated financial statements." The use of the term "extend" suggests that their opinions are not relevant to the determination of the accounting for the transaction in the financial statements of the Province. This is not correct and should be clarified. | N |
| Figure 1 | 1 | Figure 1 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Figure 2 | 2 | Figure 2 is misleading as it omits the flow of transactions during the period the debt is repaid. | N |
| Appendix | 2 | References a provincial guarantee. It is more appropriate to indicate limited guarantee. The support provided has specific conditions rather than a full guarantee. | N |

***Exhibit 1*: OFHP Cost Comparison**

| | Interest | Peak debt | Saving if Province funded entire refinancing |
|---|---|---|---|
| March 1 - ENERGY estimate | 25.1 | 27.7 | n/a |
| May 24 - AG / FAO report* | 21.0 | 26.2 | 4.0 |
| August 31 - ENERGY LTEP estimate | 18.3 | 18.5 | n/a |

*Cost data included in Auditor General report references FAO report and contains the same values

DRAFT

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Anna Strathy; Anthony Reiss (MGS); Keley Katona (ENERGY); Hilary Cox (ENE); Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Subject:** | Re: CEO Approved TB Submission for Change of Law Assumption Agreement |
| **Date:** | Tuesday, September 12, 2017 7:57:18 AM |

---

Phew! I'll start breathing again! Thanks for the clarification, Malle. Complex file, isn't this?

> On Sep 12, 2017, at 7:54 AM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Hi Gadi
>
> We do have authority to provide a guarantee or indemnity which is a charge on the CRF so that the Province can pay when due to the investors. It is the part where the province actually replaces the financing entity more officially as the debtor ie the optional replacement part that requires some more analysis and whether that fits under the guarantee authority
> Malle
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gadi Mayman
> Sent: Tuesday, September 12, 2017 07:33
> To: Strathy, Anna (OFA)
> Cc: Hanslep, Malle (MOF); Reiss, Anthony (MOF); Katona, Keley (MOF); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA)
> Subject: Re: CEO Approved TB Submission for Change of Law Assumption Agreement
>
>
> I don't think that I understand how this would work, and it strikes me as a very significant issue going to the heart of the value of what we had been calling a guarantee and have now rebranded as an assumption agreement.
>
> How would investors get paid their principal and interest if we don't step in to take over the obligations in the case that the assumption agreement is triggered? I've been going on the assumption, pardon the slightly different use of that word, for the past few months that the Province immediately takes over the debt so that investors aren't at risk of a missed or delayed payment. If that's not possible under current legislation, we need TB to approve a solution that would be included in the Fall Budget Bill that allows us, and assures OPG, investors and the rating agencies, that they will continue to be paid if there is a triggering event, and that those payments will be on the same timelines as if there was no triggering event, unless I'm over interpreting what this means.
>
> Thanks,
> Gadi
>
> On Sep 12, 2017, at 7:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>> wrote:
>
> Thanks Malle. Not a problem. We may continue to receive comments on this draft as it moves through CAO, DM and Minister approvals. I'll prepare a track changes version for Legal sign-off today and recirculation to the group (assuming Gadi is comfortable with the changes).
>
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Monday, September 11, 2017 5:55 PM
> To: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca<mailto:Anthony.Reiss@ontario.ca>>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>
> Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Tobias P. Whitfield (MOF)

<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Also, we had a further call with Blakes this afternoon regarding the optional replacement possibility and it is possible that the Province might need some additional legal authority to directly assume the debt (as it may not be considered to be an indemnity or guarantee) but since this is optional for the Province, the Province could to obtain that authority in the future. The purpose of having it in the term sheet is to identify this for OPG as an item which we may wish they include in their documentation with other parties to enable this option to be open. If this is happening in a change in law scenario the Province would likely give itself legislative authority to do this as part of the change in law, but we wanted to flag this now too so could we add "subject to obtaining the necessary authority" at the end of the paragraph beginning "In the event.." on p. 3. We haven't had a chance to fully analyze this at this point but think we should include this in the submission now.
>
> Sorry for these last minute comments.
>
> Malle
>
> From: Hanslep, Malle (MOF)
> Sent: September 11, 2017 5:41 PM
> To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Re: 2(b) when I say the 2 last paragraphs, I mean the paragraphs below 2 (b)(i) and (ii).
>
> From: Hanslep, Malle (MOF)
> Sent: September 11, 2017 5:32 PM
> To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Hi all,
>
> Sorry about this, but I have a few comments on this version which I hope are not too late. I know that this is moving quickly.
>
> 2(a) Can we add the word "substantially" in this proposed minute? Also, as we know and was only discussed this morning, the term sheet doesn't include support for the sub debt yet. Should this be included into the version or should we await confirmation from OPCD.
>
> 2(b) The 2 last paragraphs should be deleted because the current OIC draft does not specify terms and conditions or a maximum liability as this will be left to the Ministers to determine.
>
> p. 3 – second bullet point Should be "A court decision that declares the ability of the Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable."
>
> Same changes in Recommendation section.
>
>
>
> From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
> Sent: September 11, 2017 5:04 PM
> To: Reiss, Anthony (MOF); Katona, Keley (MOF); Hanslep, Malle (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Anthony, Keley, Malle,

>
> Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).
>
> Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
> Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.
> Anthony, I'll resend a scan with Legal sign-off once we have it.
>
> Please don't hesitate to contact me should you have any questions.
>
> Thanks, Anna
>
> Anna Strathy
> Special Policy Advisor to CEO
> Ontario Financing Authority
> 1 Dundas Street West, 14th Floor
> 416.325.8032 | anna.strathy@ofina.on.ca<mailto:anna.strathy@ofina.on.ca>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman; Anna Strathy |
| **Cc:** | Anthony Reiss (MGS); Keley Katona (ENERGY); Hilary Cox (ENE); Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Subject:** | Re: CEO Approved TB Submission for Change of Law Assumption Agreement |
| **Date:** | Tuesday, September 12, 2017 7:54:31 AM |

---

Hi Gadi

We do have authority to provide a guarantee or indemnity which is a charge on the CRF so that the Province can pay when due to the investors. It is the part where the province actually replaces the financing entity more officially as the debtor ie the optional replacement part that requires some more analysis and whether that fits under the guarantee authority
Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Gadi Mayman
Sent: Tuesday, September 12, 2017 07:33
To: Strathy, Anna (OFA)
Cc: Hanslep, Malle (MOF); Reiss, Anthony (MOF); Katona, Keley (MOF); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA)
Subject: Re: CEO Approved TB Submission for Change of Law Assumption Agreement

I don't think that I understand how this would work, and it strikes me as a very significant issue going to the heart of the value of what we had been calling a guarantee and have now rebranded as an assumption agreement.

How would investors get paid their principal and interest if we don't step in to take over the obligations in the case that the assumption agreement is triggered? I've been going on the assumption, pardon the slightly different use of that word, for the past few months that the Province immediately takes over the debt so that investors aren't at risk of a missed or delayed payment. If that's not possible under current legislation, we need TB to approve a solution that would be included in the Fall Budget Bill that allows us, and assures OPG, investors and the rating agencies, that they will continue to be paid if there is a triggering event, and that those payments will be on the same timelines as if there was no triggering event, unless I'm over interpreting what this means.

Thanks,
Gadi

On Sep 12, 2017, at 7:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>> wrote:

Thanks Malle. Not a problem. We may continue to receive comments on this draft as it moves through CAO, DM and Minister approvals. I'll prepare a track changes version for Legal sign-off today and recirculation to the group (assuming Gadi is comfortable with the changes).

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, September 11, 2017 5:55 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca<mailto:Anthony.Reiss@ontario.ca>>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement

Also, we had a further call with Blakes this afternoon regarding the optional replacement possibility and it is

possible that the Province might need some additional legal authority to directly assume the debt (as it may not be considered to be an indemnity or guarantee) but since this is optional for the Province, the Province could to obtain that authority in the future. The purpose of having it in the term sheet is to identify this for OPG as an item which we may wish they include in their documentation with other parties to enable this option to be open. If this is happening in a change in law scenario the Province would likely give itself legislative authority to do this as part of the change in law, but we wanted to flag this now too so could we add "subject to obtaining the necessary authority" at the end of the paragraph beginning "In the event.." on p. 3. We haven't had a chance to fully analyze this at this point but think we should include this in the submission now.

Sorry for these last minute comments.

Malle

From: Hanslep, Malle (MOF)
Sent: September 11, 2017 5:41 PM
To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement

Re: 2(b) when I say the 2 last paragraphs, I mean the paragraphs below 2 (b)(i) and (ii).

From: Hanslep, Malle (MOF)
Sent: September 11, 2017 5:32 PM
To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement

Hi all,

Sorry about this, but I have a few comments on this version which I hope are not too late. I know that this is moving quickly.

2(a) Can we add the word "substantially" in this proposed minute? Also, as we know and was only discussed this morning, the term sheet doesn't include support for the sub debt yet. Should this be included into the version or should we await confirmation from OPCD.

2(b) The 2 last paragraphs should be deleted because the current OIC draft does not specify terms and conditions or a maximum liability as this will be left to the Ministers to determine.

p. 3 – second bullet point Should be "A court decision that declares the ability of the Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable."

Same changes in Recommendation section.

From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
Sent: September 11, 2017 5:04 PM
To: Reiss, Anthony (MOF); Katona, Keley (MOF); Hanslep, Malle (MOF)
Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
Subject: CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,

Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).

Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.
Anthony, I'll resend a scan with Legal sign-off once we have it.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca<mailto:anna.strathy@ofina.on.ca>

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Anna Strathy |
| **Cc:** | Malle Hanslep (MOF); Anthony Reiss (MGS); Keley Katona (ENERGY); Hilary Cox (ENE); Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Subject:** | Re: CEO Approved TB Submission for Change of Law Assumption Agreement |
| **Date:** | Tuesday, September 12, 2017 7:33:51 AM |

I don't think that I understand how this would work, and it strikes me as a very significant issue going to the heart of the value of what we had been calling a guarantee and have now rebranded as an assumption agreement.

How would investors get paid their principal and interest if we don't step in to take over the obligations in the case that the assumption agreement is triggered? I've been going on the assumption, pardon the slightly different use of that word, for the past few months that the Province immediately takes over the debt so that investors aren't at risk of a missed or delayed payment. If that's not possible under current legislation, we need TB to approve a solution that would be included in the Fall Budget Bill that allows us, and assures OPG, investors and the rating agencies, that they will continue to be paid if there is a triggering event, and that those payments will be on the same timelines as if there was no triggering event, unless I'm over interpreting what this means.

Thanks,
Gadi

On Sep 12, 2017, at 7:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Thanks Malle. Not a problem. We may continue to receive comments on this draft as it moves through CAO, DM and Minister approvals. I'll prepare a track changes version for Legal sign-off today and recirculation to the group (assuming Gadi is comfortable with the changes).
>
> **From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> **Sent:** Monday, September 11, 2017 5:55 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> **Subject:** RE: CEO Approved TB Submission for Change of Law Assumption Agreement
> Also, we had a further call with Blakes this afternoon regarding the optional replacement possibility and it is possible that the Province might need some additional legal authority to directly assume the debt (as it may not be considered to be an indemnity or guarantee) but since this is optional for the Province, the Province could to obtain that authority in the future. The purpose of having it in the term sheet is to identify this for OPG as an item which we may wish they include in their documentation with other parties to enable this option to be open. If this is happening in a change in law scenario the Province would likely give itself legislative authority to do this as part of the change in law, but we wanted to flag this now too so could we add "subject to obtaining the necessary authority" at the end of the paragraph beginning "In the

event..” on p. 3. We haven’t had a chance to fully analyze this at this point but think we should include this in the submission now.
Sorry for these last minute comments.
Malle

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 11, 2017 5:41 PM
**To:** Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
**Cc:** Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
**Subject:** RE: CEO Approved TB Submission for Change of Law Assumption Agreement

Re: 2(b) when I say the 2 last paragraphs, I mean the paragraphs below 2 (b)(i) and (ii).

---

**From:** Hanslep, Malle (MOF)
**Sent:** September 11, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
**Cc:** Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
**Subject:** RE: CEO Approved TB Submission for Change of Law Assumption Agreement

Hi all,
Sorry about this, but I have a few comments on this version which I hope are not too late. I know that this is moving quickly.
2(a) Can we add the word “substantially” in this proposed minute? Also, as we know and was only discussed this morning, the term sheet doesn’t include support for the sub debt yet. Should this be included into the version or should we await confirmation from OPCD.
2(b) The 2 last paragraphs should be deleted because the current OIC draft does not specify terms and conditions or a maximum liability as this will be left to the Ministers to determine.
p. 3 – second bullet point Should be “A court decision that declares the ability of the Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable.”
Same changes in Recommendation section.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 11, 2017 5:04 PM
**To:** Reiss, Anthony (MOF); Katona, Keley (MOF); Hanslep, Malle (MOF)
**Cc:** Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement

Anthony, Keley, Malle,
Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I’m also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy’s briefing two weeks ago).
Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
Malle, we’ll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I’m happy to swing by 777 Bay at your convenience tomorrow with the approval package.
Anthony, I’ll resend a scan with Legal sign-off once we have it.
Please don’t hesitate to contact me should you have any questions.

Thanks, Anna

**Anna Strathy**
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Gadi Mayman |
| **Cc:** | Anna Strathy; Anthony Reiss (MGS); Keley Katona (ENERGY); Hilary Cox (ENE); Tobias P. Whitfield (MOF); Mike Manning; Ronald Kwan; Ken Kandeepan |
| **Subject:** | Re: CEO Approved TB Submission for Change of Law Assumption Agreement |
| **Date:** | Tuesday, September 12, 2017 8:01:15 AM |

---

Yes it is and it s moving quite rapidly. We will speak with Steve again today about the terminology and analysis.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Gadi Mayman
Sent: Tuesday, September 12, 2017 07:57
To: Hanslep, Malle (MOF)
Cc: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA)
Subject: Re: CEO Approved TB Submission for Change of Law Assumption Agreement

Phew! I'll start breathing again! Thanks for the clarification, Malle. Complex file, isn't this?

> On Sep 12, 2017, at 7:54 AM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Hi Gadi
>
> We do have authority to provide a guarantee or indemnity which is a charge on the CRF so that the Province can pay when due to the investors. It is the part where the province actually replaces the financing entity more officially as the debtor ie the optional replacement part that requires some more analysis and whether that fits under the guarantee authority
> Malle
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Gadi Mayman
> Sent: Tuesday, September 12, 2017 07:33
> To: Strathy, Anna (OFA)
> Cc: Hanslep, Malle (MOF); Reiss, Anthony (MOF); Katona, Keley (MOF); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA)
> Subject: Re: CEO Approved TB Submission for Change of Law Assumption Agreement
>
>
> I don't think that I understand how this would work, and it strikes me as a very significant issue going to the heart of the value of what we had been calling a guarantee and have now rebranded as an assumption agreement.
>
> How would investors get paid their principal and interest if we don't step in to take over the obligations in the case that the assumption agreement is triggered? I've been going on the assumption, pardon the slightly different use of that word, for the past few months that the Province immediately takes over the debt so that investors aren't at risk of a missed or delayed payment. If that's not possible under current legislation, we need TB to approve a solution that would be included in the Fall Budget Bill that allows us, and assures OPG, investors and the rating agencies, that they will continue to be paid if there is a triggering event, and that those payments will be on the same timelines as if there was no triggering event, unless I'm over interpreting what this means.
>
> Thanks,
> Gadi
>
> On Sep 12, 2017, at 7:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>> wrote:

>
> Thanks Malle. Not a problem. We may continue to receive comments on this draft as it moves through CAO, DM and Minister approvals. I'll prepare a track changes version for Legal sign-off today and recirculation to the group (assuming Gadi is comfortable with the changes).
>
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Monday, September 11, 2017 5:55 PM
> To: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca<mailto:Anthony.Reiss@ontario.ca>>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>
> Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Also, we had a further call with Blakes this afternoon regarding the optional replacement possibility and it is possible that the Province might need some additional legal authority to directly assume the debt (as it may not be considered to be an indemnity or guarantee) but since this is optional for the Province, the Province could to obtain that authority in the future. The purpose of having it in the term sheet is to identify this for OPG as an item which we may wish they include in their documentation with other parties to enable this option to be open. If this is happening in a change in law scenario the Province would likely give itself legislative authority to do this as part of the change in law, but we wanted to flag this now too so could we add "subject to obtaining the necessary authority" at the end of the paragraph beginning "In the event.." on p. 3. We haven't had a chance to fully analyze this at this point but think we should include this in the submission now.
>
> Sorry for these last minute comments.
>
> Malle
>
> From: Hanslep, Malle (MOF)
> Sent: September 11, 2017 5:41 PM
> To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Re: 2(b) when I say the 2 last paragraphs, I mean the paragraphs below 2 (b)(i) and (ii).
>
> From: Hanslep, Malle (MOF)
> Sent: September 11, 2017 5:32 PM
> To: Strathy, Anna (OFA); Reiss, Anthony (MOF); Katona, Keley (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: RE: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Hi all,
>
> Sorry about this, but I have a few comments on this version which I hope are not too late. I know that this is moving quickly.
>
> 2(a) Can we add the word "substantially" in this proposed minute? Also, as we know and was only discussed this morning, the term sheet doesn't include support for the sub debt yet. Should this be included into the version or should we await confirmation from OPCD.
>
> 2(b) The 2 last paragraphs should be deleted because the current OIC draft does not specify terms and conditions or a maximum liability as this will be left to the Ministers to determine.
>
> p. 3 – second bullet point Should be "A court decision that declares the ability of the Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable."

>
> Same changes in Recommendation section.
>
>
>
> From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
> Sent: September 11, 2017 5:04 PM
> To: Reiss, Anthony (MOF); Katona, Keley (MOF); Hanslep, Malle (MOF)
> Cc: Mayman, Gadi (OFA); Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF)
> Subject: CEO Approved TB Submission for Change of Law Assumption Agreement
>
> Anthony, Keley, Malle,
>
> Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).
>
> Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
> Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.
> Anthony, I'll resend a scan with Legal sign-off once we have it.
>
> Please don't hesitate to contact me should you have any questions.
>
> Thanks, Anna
>
> Anna Strathy
> Special Policy Advisor to CEO
> Ontario Financing Authority
> 1 Dundas Street West, 14th Floor
> 416.325.8032 | anna.strathy@ofina.on.ca<mailto:anna.strathy@ofina.on.ca>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Ken Kandeepan
**To:** Anna Strathy
**Cc:** Ronald Kwan; Mike Manning
**Subject:** Re: Call this morning
**Date:** Friday, November 17, 2017 11:11:29 AM

---

Hi Anna

I am in transit so won't be able to make the call, hopefully Ron and Mike will be there.

Thanks

Ken k

On Nov 17, 2017, at 11:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> For 11am
>
> **From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
> **Sent:** Friday, November 17, 2017 10:56 AM
> **To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Cc:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: Call this morning
> In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com
> Dir: 416-863-3086
>
> ---
>
> **Blake, Cassels & Graydon LLP**
> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
> Tel: 416-863-2400 Fax: 416-863-2653
> **blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
> **Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
> This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
> L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.
>
> **From:** ASHBOURNE, STEPHEN
> **Sent:** Friday, November 17, 2017 10:50 AM
> **To:** 'Hanslep, Malle (MOF)'
> **Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
> **Subject:** RE: Call this morning
> Malle, I can talk at 11 if that still works for others. Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com

Dir: 416-863-3086

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.

Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

<23239360-v14-CLPA - Protection Agreement.DOCX>

<23239360-vpdf-CLPA - Protection Agreement.PDF>

**From:** Ken Kandeepan
**To:** Anna Strathy
**Cc:** Ronald Kwan; Mike Manning
**Subject:** Re: Call this morning
**Date:** Friday, November 17, 2017 11:20:52 AM

---

Anna

I guess it's too late but be useful to have included Cindy/Mark

Thanks

Ken k

On Nov 17, 2017, at 11:03 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> For 11am
>
> **From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
> **Sent:** Friday, November 17, 2017 10:56 AM
> **To:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Cc:** Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: Call this morning
> In case it's useful, I attach my mark-up of the Protection Agreement (so far), for your interim consideration. Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com
> Dir: 416-863-3086
>
> ---
>
> **Blake, Cassels & Graydon LLP**
> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
> Tel: 416-863-2400 Fax: 416-863-2653
> **blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
> **Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
> This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
> L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.
>
> **From:** ASHBOURNE, STEPHEN
> **Sent:** Friday, November 17, 2017 10:50 AM
> **To:** 'Hanslep, Malle (MOF)'
> **Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
> **Subject:** RE: Call this morning
> Malle, I can talk at 11 if that still works for others. Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com

Dir: 416-863-3086

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** Friday, November 17, 2017 9:55 AM
**To:** ASHBOURNE, STEPHEN
**Cc:** Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)
**Subject:** Call this morning

Hi Steve,

We would like to have a call with you this morning to discuss the implications of the alternative option that was discussed yesterday and what OPG's response so far has been. I relayed to Ken, Mike and others the fact that s. 11.01 of the Trust Indenture provides for amendments to be made without consent of specified creditors and that this is one of the reasons why OPG's proposal to put Province in the category of specified creditor alone would not result in the Province getting notice of all amendments from the Indenture Trustee. I think it would be helpful to have a discussion to go over all of the related issues.

Perhaps about 11 would be a good time – would that work for you?

Also, we are reviewing the revised versions of the agreements and as relayed last evening I have questions about the new wording under limited guarantee among other points so not sure when we will review that as well.

Thanks.

Malle
Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

<23239360-v14-CLPA - Protection Agreement.DOCX>

<23239360-vpdf-CLPA - Protection Agreement.PDF>

**From:** Anna Strathy
**To:** Ken Kandeepan; Mike Manning; Ronald Kwan
**Subject:** Re: Change of Law Protection Agreement and Change of Law Process Agreement
**Date:** Friday, November 17, 2017 4:39:24 PM

---

I'm sorry I couldn't join the 2:30pm call. I got the debrief from Malle and updated Gadi over the phone.

Have a good weekend. Hopefully no further drafts of the agreement circulated for review

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Nov 17, 2017, at 4:36 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> **From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
> **Sent:** November 17, 2017 4:24 PM
> **To:** Mansoori, Nina; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Ramchandani, Rima
> **Cc:** Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); VINER, JON; PRESTAGE, JA; Cayley, Daniel (ENERGY); Mayman, Gadi (OFA)
> **Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
> Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve
> Stephen R. Ashbourne
> Partner
> stephen.ashbourne@blakes.com
> Dir: 416-863-3086
>
> **From:** Mansoori, Nina [mailto:nmansoori@torys.com]
> **Sent:** Thursday, November 16, 2017 8:29 PM
> **To:** ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
> **Cc:** Mansoori, Nina
> **Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement
> All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business

points to be discussed on these documents tomorrow. Many thanks,

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-14-17 8:30 PM
**To:** Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]
**Sent:** Thursday, November 09, 2017 2:11 AM
**To:** Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
**Cc:** Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
**Subject:** RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which

Stephen circulated on November 2 . The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

**Rocco Sebastiano**
Partner
416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
[osler.com]

---

**From:** ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
**Sent:** November-02-17 9:02 PM
**To:** Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
**Cc:** Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
**Subject:** Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

---

**Blake, Cassels & Graydon LLP**

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]
**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

<23239361-v12-CLPA - Process Agreement.DOCX>

<23239361-vpdf-CLPA - Process Agreement.PDF>

<23239360-v15-CLPA - Protection Agreement.DOCX>

<23239360-vpdf-CLPA - Protection Agreement.PDF>

**From:** Gadi Mayman
**To:** Scott Nelms (ENERGY)
**Cc:** Steen Hume (CAB); Mike Manning; Ronald Kwan; Ken Kandeepan
**Subject:** Re: Draft Fees Regulation
**Date:** Tuesday, September 26, 2017 2:15:30 PM

---

Thanks, Scott. I understand that there are a few items in here that are a little different than what we'd expected, so we'll get back to you with our consolidated OFA response tomorrow.

Regards,
Gadi

On Sep 26, 2017, at 12:18 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:

> Hi Gadi,
> I hope NYC is going well and you are finding air conditioning.
> We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):
>
> - The draft reg outlines a base fee as well as a variable fee.
>   - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
>   - The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
>   - It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.
> - With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if there should be a role for the OFA in reviewing / providing oversight in this regard?
>   - Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?
> - On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).
>
> In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure

we are on the right track.
Thanks for your help,
Scott

**From:** John Kim
**To:** Ken Kandeepan; Mike Manning; James Devine
**Cc:** Carlos Yep; Ronald Kwan
**Subject:** Re: Draft Fees Regulation
**Date:** Wednesday, September 27, 2017 4:20:15 PM

---

Looping Ron in the email chain.

Sent from my iPhone

On Sep 27, 2017, at 3:42 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Some minor comments. All under Base Fee section.
> I'd convey that the compromise of 5bps is still generous more explicitly. I think that was Jim's comment. The rest of the comments imply it but could be useful. "10bps is high. We would recommend a compromise of 5bps to start, which we feel is still generous and to be reviewed in a year."
> Where it says "This is consistent with the actual fees paid by OPG and the Province…", consider adding "also" to imply that it is referring to the 1-2bps for passive fixed income funds.
> "From a significant economics of the financing entity,…" I wasn't quite sure what this is trying to say. Could be just me.
>
> **From:** Ken Kandeepan
> **Sent:** Wednesday, September 27, 2017 2:54 PM
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** RE: Draft Fees Regulation
> Hi Mike at al
> Pls see the draft email back to Scott Nelms, all credit to Carlos. Mike you may want to send it to Scott with cc's to the usual suspects, if you have any logistical issues, I am happy to do so, I will wait until 4.30 and if I don't hear from you will send it out.
> Thanks
> Ken k
>
> **From:** Carlos Yep
> **Sent:** Wednesday, September 27, 2017 2:43 PM
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** FW: Draft Fees Regulation
> **Importance:** High
> Ken
> Here are some thoughts …
> Base Fee: 10bps is high. We recommend a compromise of 5bps to be reviewed in a year.
> As background, market investment manager fees are 1-2bps for passive fixed income funds.
> This is consistent with the actual fees paid by OPG and Province to co-manage the nuclear fund's index fixed income funds. The index funds require constant rebalancing by the investment manager.
> From a significant economics of the financing entity, OPG is getting 44% equity investment from the Province at 0% cost and lending the funds as subordinated debt at a forecasted yield of around 5%.

Ie. For each $2.5B of Global Asset X 44% equity injection would contribute $55million net revenue to OPG for each of 10 years and would be a reduced amounts for the following 30 years as the Global Asset is paid down.
Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …"
That means deleting column 1 and item 2 of the table.
Pass through costs: Pass through costs as outlined in the draft regulations appear reasonable. As suggested in Scott's email including tighter language that prevents any OPG costs from being passed through makes sense. As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

---

**From:** Mike Manning
**Sent:** Tuesday, September 26, 2017 1:53 PM
**To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
**Cc:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: Draft Fees Regulation
**Importance:** High
I was talking to Ken Kandeepan, and he was talking about arranging a meeting for as early as tomorrow.
Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Tuesday, September 26, 2017 12:18 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
**Cc:** Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
**Subject:** Draft Fees Regulation
**Importance:** High
Hi Gadi,
I hope NYC is going well and you are finding air conditioning.
We have been working with Steen's team and Energy legal on a draft of the fees regulation for OPG Trust and OFHP. As we progress through this, there are some elements of the regulation that we were hoping you and the OFA team might be able to consider (please see attached a black line for your reference):

- The draft reg outlines a base fee as well as a variable fee.
  - The base fee is provided monthly at an annual rate of 10-basis points for the first two years (we had this initially set at one year but Torys' markup changes this to two years). After 2019, the base fee is provided at an annual rate of 8 basis points should the funding obligations exceed $10B. Does this seem reasonable?
- The variable fee structure seems consistent with previous discussions (5 basis point fee provided on the spread). Do you think this makes sense?
- It would also be helpful if the OFA could let us know if the method for calculating the monthly funding obligation is reasonable.

- With respect to costs, our understanding is that these sorts of costs are typically a pass through; can the OFA confirm? The Torys markup removes OEB oversight on costs but we are wondering if

there should be a role for the OFA in reviewing / providing oversight in this regard?

<!--[if !supportLists]-->o <!--[endif]-->Also, do the costs they've outlined seem reasonable? In particular, LSB is wondering whether this leaves the door open for OPG to pass through any overhead costs (i.e. should we be explicit about excluding them)?

<!--[if !supportLists]-->• <!--[endif]-->On timing, the draft reg currently contemplates a fee application by OPG every two years regardless of what interest rates are in the market. Do we think this is fair or should the application occur annually? (Note that until new fees are established, the old fees are still in effect).

In terms of next steps, OPG would like to get a draft to their Board in time for the meeting on Friday. ENERGY LSB is hoping for comments by tomorrow. I don't think we need anything too detailed or formal, but a quick sniff test would be useful to ensure we are on the right track.

Thanks for your help,

Scott

**From:** LEE John -TREASURY
**To:** Mike Manning
**Cc:** RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
**Subject:** Re: EXTERNAL - Re: Most recent provincial support agreement
**Date:** Thursday, September 14, 2017 7:06:07 AM

---

Likewise may be tough to pull parties together today. I will check. Would tomorrow work as well?

Sent with BlackBerry Work (www.blackberry.com)

---

From: Mike Manning <Mike.Manning@ofina.on.ca>
Sent: Sep 14, 2017 6:53 AM
To: LEE John -TREASURY <john.s.lee@opg.com>
Subject: EXTERNAL - Re: Most recent provincial support agreement
Cc: RYFA Ken -TREASURY <ken.ryfa@opg.com>; "Scott Nelms (ENERGY)" <Scott.Nelms@ontario.ca>

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Hi John:
Is there a time today that you would be available for such
a working session? Obviously quite a few people on our side will need to be involved and some coordination involved. I'm assuming this version incorporates input from your dealers. It would be useful to get the markup as soon as possible and may be useful to have a quick chat on the business issues prior to the business session.
Regards, Mike

Sent from my iPad

On Sep 13, 2017, at 5:08 PM, LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>> wrote:

Mike:

Given your need to get something in front of the ministers for approval by Sept 26(?). I believe it would be helpful to have a working session with your lawyers and yourself to land on a version of the document that works for both sides and meets the accounting and commercial requirements for the transaction. A markup will be provided tomorrow which will reflect both external counsel and the dealers comments.

Let me know your thoughts on this approach.

John

John Lee | Vice President Treasurer |
Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
416.592.6392 | john.s.lee@opg.com<mailto:john.s.lee@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are

not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

**From:** Mike Manning
**To:** LEE John -TREASURY
**Cc:** RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
**Subject:** Re: EXTERNAL - Re: Most recent provincial support agreement
**Date:** Thursday, September 14, 2017 7:13:08 AM

---

I have sent out an email this morning about having a potential working session. I assumed we would shoot for today but would expect tomorrow would be ok if today doesn't work. Having the new version out early today would be helpful to give people time to analyze the new document.
Mike

Sent from my iPad

> On Sep 14, 2017, at 7:06 AM, LEE John -TREASURY <john.s.lee@opg.com> wrote:
>
> Likewise may be tough to pull parties together today. I will check. Would tomorrow work as well?
>
> Sent with BlackBerry Work (www.blackberry.com)
> _____
> From: Mike Manning <Mike.Manning@ofina.on.ca>
> Sent: Sep 14, 2017 6:53 AM
> To: LEE John -TREASURY <john.s.lee@opg.com>
> Subject: EXTERNAL - Re: Most recent provincial support agreement
> Cc: RYFA Ken -TREASURY <ken.ryfa@opg.com>; "Scott Nelms (ENERGY)" <Scott.Nelms@ontario.ca>
>
> *** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
> _____
>
>
> Hi John:
> Is there a time today that you would be available for such
> a working session? Obviously quite a few people on our side will need to be involved and some coordination involved. I'm assuming this version incorporates input from your dealers. It would be useful to get the markup as soon as possible and may be useful to have a quick chat on the business issues prior to the business session.
> Regards, Mike
>
> Sent from my iPad
>
> On Sep 13, 2017, at 5:08 PM, LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>> wrote:
>
> Mike:
>
> Given your need to get something in front of the ministers for approval by Sept 26(?). I believe it would be helpful to have a working session with your lawyers and yourself to land on a version of the document that works for both sides and meets the accounting and commercial requirements for the transaction. A markup will be provided tomorrow which will reflect both external counsel and the dealers comments.
>
> Let me know your thoughts on this approach.
>
> John
>
>
> John Lee | Vice President Treasurer |

> Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
> 416.592.6392 | john.s.lee@opg.com<mailto:john.s.lee@opg.com>
>
>
>
>
> _____
>
> THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
> _____
>
> THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | LEE John -TREASURY; Ramchandani, Rima; "nmansoori@torys.com" |
| **Cc:** | Mike Manning; ASHBOURNE, STEPHEN; WONG Leslie -LAWDIV; LAURETA LAPIRA May -TREASURY; LADAK Lubna -TREASURY; Ken Kandeepan |
| **Subject:** | Re: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement |
| **Date:** | Friday, November 17, 2017 5:38:04 PM |

Hi John

As a follow up here the province is requesting that this be in the master trust indenture. That it be an obligation of the Trust and Indenture Trustee and that it be included in the amendment provisions of the trust indenture s 11,01 11'02 and 13.18 and acknowledge the point about the point that failure to reliever the notice does not invalidate. As noted we are requesting inclusion in the Trust Indenture not protection agreement

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: LEE John -TREASURY

Sent: Friday, November 17, 2017 16:56

To: Ramchandani, Rima; 'nmansoori@torys.com'

Cc: Manning, Mike (OFA); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); WONG Leslie -LAWDIV; LAURETA LAPIRA May -TREASURY; LADAK Lubna -TREASURY; Kandeepan, Ken (OFA)

Subject: RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Rima:

Further to our early discussion I have confirmed with Mike the approach to the amendments, can you draft something that reflect the following points:

- Province gets a copy of all the notices regarding amendments that OPG sends to the Indenture Trustee under the MTI;

- Province gets a copy of all of the notices regarding amendments that the Indenture Trustee under the MTI sends out to bondholders;

- This could be put in the Change of Law Protection Agreement, where the Indenture Trustee is a party. However, if it is in the

MTI, the Province would not be a party to the MTI as this may trip accounting test. Please note the Province request below that it be in the MTI.

- The failure by OPG or the Indenture Trustee to deliver a notice to the Province does not invalidate the amendments or the Province's guarantee which is the key point from the Dealers.

We will need Torys (in consultation with Oslers) to prepare the specific language and confirm where it will go.

If you could expedite this request that would be appreciated.

Thanks

John

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Friday, November 17, 2017 4:41 PM

To: LEE John -TREASURY <john.s.lee@opg.com>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>

Cc: Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>

Subject: RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Thanks John.

Regarding the other item that you discussed with Mike on the approach to amendments to the master trust indenture respecting notice to the Province, we would appreciate receive a mark-up of the master trust indenture of OPG's proposal for the Province's review as soon as possible for our review as this is an important item for the Province.

Thank you.

Malle

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]

Sent: November 17, 2017 4:37 PM

To: ASHBOURNE, STEPHEN

Cc: Hanslep, Malle (MOF); Manning, Mike (OFA)

Subject: RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Thanks for turning this around quickly.

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: Friday, November 17, 2017 4:24 PM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Saulnier, Brett <bsaulnier@torys.com<mailto:bsaulnier@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>

Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>) <Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>>; Gadi Mayman (Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>

Subject: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

---

Attached are comments on your drafts from 8:30 last night. The attached blacklines are to those versions. These remain subject to review and comment by the Province, but we hope will give you a version (with several open items identified in Notes) OPG can feel comfortable sharing with its Board for their information purposes. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>

Dir: 416-863-3086

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: Thursday, November 16, 2017 8:29 PM

To: ASHBOURNE, STEPHEN; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>; Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>

Cc: Mansoori, Nina

Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow. Many thanks,

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario  M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.torys.com-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3DtUkbK4vg5JZat-252BKbMZJ3oslyb84BsMMsjIi5Bsl5A2c-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=WEC1h2nuSHafGfMb9TRqaLE0_72vtl-GheiOdsN9KkE&e=>

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.torys.com-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3DWo7Fvy-252FhQnSNmYnZL5mDtHLs-252FgsDH6nSoWE8oesbZ-252BQ-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=0zh4WXTnqZuyjlKmU4bJOcbknuMVCnBn5JwQnXqb5ig&e=>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: November-14-17 8:30 PM

To: Sebastiano, Rocco <RSebastiano@osler.com<mailto:RSebastiano@osler.com>>; Ramchandani, Rima

<rramchandani@torys.com<mailto:rramchandani@torys.com>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>; Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>; Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Saulnier, Brett <bsaulnier@torys.com<mailto:bsaulnier@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; Milligan, Peter <PMilligan@osler.com<mailto:PMilligan@osler.com>>; Fullerton, Rick <RFullerton@osler.com<mailto:RFullerton@osler.com>>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com<mailto:Donnie.Persaud@cibc.com>>; Adalja, Sunil <Sunil.Adalja@cibc.com<mailto:Sunil.Adalja@cibc.com>>; Maciel, Andrew <Andrew.Maciel@cibc.com<mailto:Andrew.Maciel@cibc.com>>; 'Benaiah, Ian' <ian.benaiah@rbccm.com<mailto:ian.benaiah@rbccm.com>>; 'Khan, Nur (nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>)' <nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com<mailto:brent.r.taylor@rbccm.com>>; Niehaus, Katrina <Katrina.Niehaus@gs.com<mailto:Katrina.Niehaus@gs.com>>; Delaney, Brian <Brian.Delaney@gs.com<mailto:Brian.Delaney@gs.com>>; Conner, Robbin <Robbin.Conner@gs.com<mailto:Robbin.Conner@gs.com>>

Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>

Dir: 416-863-3086

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]

Sent: Thursday, November 09, 2017 2:11 AM

To: Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>; Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>

Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin

Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I

have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

[cid:image001.gif@01D35D84.2A5D7330]

Rocco Sebastiano

Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com<mailto:rsebastiano@osler.com>

Osler, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place

Toronto, Ontario, Canada M5X 1B8

[cid:image002.gif@01D35D84.2A5D7330]<https://urldefense.proofpoint.com/v2/url?u=https-

3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.osler.com-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3D0Pc7uHm4j38y1Uittg6Sapw2TJKTc5w2or6s-252B7FxYq0-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=KIf0GE6-E8Gd53I4R8b72rx2y5DLvDnJz0R4CCdYE6A&e= >

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: November-02-17 9:02 PM

To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>

Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>

Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>

Dir:  416-863-3086

_____

[cid:imageb23443.GIF@edc8812c.40a5c483]

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400  Fax: 416-863-2653

blakes.com<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3Dk59YKfUpLpn-252FC9BDGMKRJi1uaTzGuCObxbyqB3NOEAc-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=4HWeZwecfqojDXwurBES3eiEFHV1E_YyJX-PZOIZbts&e= > | Twitter<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Ftwitter.com-252FBlakesLaw-252F-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3D3-252FVPggjMcoACGXvIpZHdbYv-252FleQN2EAPz0xVTo9dD8o-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=PywncnT-lWKiJzWzMokmoa8cWXbQz0EIBgNE4QO608Y&e= > | Unsubscribe<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-252FEnglish-252FResources-252FBulletins-252FPages-252Funsubscribe.aspx-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257C4399c6d6b4c946b2e0c708d52e019a22-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636465507755337662-26sdata-3DMGcAcyKprZpqg-252B4THWvPMiPB8IA1S8LYIW6MN1aZdBE-253D-26reserved-3D0&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vqxJu5VutggeTv5i0b1mQtK1N_3bVyInoPCuhxTeL0E&s=L48okG560wkbBA7l3kP8dPtM1kIF0JOzD8UmebtYbRM&e= >

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents

This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m’en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

_____

**********

This e-mail message is privileged, confidential and subject to

copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et

soumis à des droits d'auteur. Il est interdit de l'utiliser ou

de le divulguer sans autorisation.

**********

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

_____

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

_____

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Anna Strathy |
| **Subject:** | Re: FHP Support Agreement OIC Draft |
| **Date:** | Thursday, September 07, 2017 9:46:03 PM |

---

Thanks, Malle. I think it would be very helpful for you and Toby to be on the call to, hopefully, prevent this discussion from going down unnecessary rabbit holes. My concern is that, to use a term that I often hear lawyers use in a different context, time is of the essence, and it's important that Torys isn't simply using this as an opportunity to extract even more billable hours from what has already been a very profitable file for them.

I had a discussion with OPG's CFO, Ken Hartwick this morning and he told me that they were satisfied with the term sheet, so I don't know why, if their client is satisfied, Torys feels the need to prolong this discussion. To meet the timelines to get this through both our ministries and then have the submission signed by the two DMs and Ministers in time to meet TB's deadlines, this has to be ready to go to CQSD by the end of the day tomorrow, so I don't want to enter into a new round of negotiations with Torys.

Thanks again, Malle. I really appreciate having you and Toby on our side.

Gadi

Original Message
From: Hanslep, Malle (MOF)
Sent: Thursday, September 7, 2017 6:32 PM
To: Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Gadi Mayman; Anna Strathy
Subject: RE: FHP Support Agreement OIC Draft

Hi all,

Torys has invited Steve, MOF LSB and Energy LSB to a call tomorrow morning for the lawyers to go over the changes that were made to the term sheet so that they can better understand them. We think it would be helpful to discuss the wording with them directly so Toby and I propose to join the call unless there any concerns about it. It may be constructive for us to discuss the wording directly with Torys and then we would report back to you with on the call. We might also get a better idea of how the guarantee timing will fit in with the timing of the proposed debt issuances. Please let us know if you have any concerns about this.

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: September-07-17 5:53 PM
To: Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA)
Cc: Hanslep, Malle (MOF)
Subject: FHP Support Agreement OIC Draft

Please find attached, for your review and comment, a draft OIC authorizing the Minister of Finance and the Minister of Energy to give a guarantee/indemnity under the Fair Hydro Plan Act.

This draft gives a lot of authority to the Ministers to determine the scope and content of the guarantee. It would be helpful to consider whether additional terms and conditions (including a maximum amount or other limitations) should be included.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON
M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Anna Strathy |
| **Subject:** | Re: FHP Support Agreement OIC Draft |
| **Date:** | Friday, September 08, 2017 9:42:56 AM |

---

In terms of timing, one thing that I didn't mention yesterday about my conversation with Ken H is that he told me that their timing is even tighter than ours. On their critical path, they feel that in order to get the financing done this calendar year, they have to re-engage with the rating agencies next week. A critical part of that re-engagement includes providing a draft version of the term sheet. That won't work if we're still negotiating it with them, so our runway for tinkering is done, and Torys is just going to have to accept that what we've provided is the best deal they're going to get.

Regards,
Gadi

Original Message
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 9:26 AM
To: Gadi Mayman; Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Anna Strathy
Subject: RE: FHP Support Agreement OIC Draft

Thanks Gadi.

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: September 7, 2017 9:46 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Strathy, Anna (OFA)
Subject: Re: FHP Support Agreement OIC Draft

Thanks, Malle. I think it would be very helpful for you and Toby to be on the call to, hopefully, prevent this discussion from going down unnecessary rabbit holes. My concern is that, to use a term that I often hear lawyers use in a different context, time is of the essence, and it's important that Torys isn't simply using this as an opportunity to extract even more billable hours from what has already been a very profitable file for them.

I had a discussion with OPG's CFO, Ken Hartwick this morning and he told me that they were satisfied with the term sheet, so I don't know why, if their client is satisfied, Torys feels the need to prolong this discussion. To meet the timelines to get this through both our ministries and then have the submission signed by the two DMs and Ministers in time to meet TB's deadlines, this has to be ready to go to CQSD by the end of the day tomorrow, so I don't want to enter into a new round of negotiations with Torys.

Thanks again, Malle. I really appreciate having you and Toby on our side.

Gadi

Original Message
From: Hanslep, Malle (MOF)
Sent: Thursday, September 7, 2017 6:32 PM
To: Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Carlos Yep; James Devine; Mike Manning; Gadi Mayman; Anna Strathy
Subject: RE: FHP Support Agreement OIC Draft

Hi all,

Torys has invited Steve, MOF LSB and Energy LSB to a call tomorrow morning for the lawyers to go over the changes that were made to the term sheet so that they can better understand them. We think it would be helpful to discuss the wording with them directly so Toby and I propose to join the call unless there any concerns about it. It may be constructive for us to discuss the wording directly with Torys and then we would report back to you with on the call. We might also get a better idea of how the guarantee timing will fit in with the timing of the proposed debt issuances. Please let us know if you have any concerns about this.

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: September-07-17 5:53 PM
To: Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Yep, Carlos (OFA); Devine, James (OFA); Manning, Mike (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA)
Cc: Hanslep, Malle (MOF)
Subject: FHP Support Agreement OIC Draft

Please find attached, for your review and comment, a draft OIC authorizing the Minister of Finance and the Minister of Energy to give a guarantee/indemnity under the Fair Hydro Plan Act.

This draft gives a lot of authority to the Ministers to determine the scope and content of the guarantee. It would be helpful to consider whether additional terms and conditions (including a maximum amount or other limitations) should be included.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON
M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Re: FHP
**Date:** Friday, October 20, 2017 1:02:00 PM

---

Hi Malle. OK if I call you at around 2:00?
Mike

Sent from my iPhone

On Oct 20, 2017, at 12:21 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Mike,
>
> When you have a minute today, we would like to discuss the FHP file with you.
> Thanks.
>
> I just have a meeting from 1 to 2, otherwise free.
>
> Malle

**From:** Anna Strathy
**To:** Mike Manning
**Subject:** Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
**Date:** Friday, September 08, 2017 1:11:05 PM

---

No problem at all!

Sent from my iPhone

> On Sep 8, 2017, at 1:04 PM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>
> Sorry Anna for not cc'ing you.
>
> Mike
>
> -----Original Message-----
> From: Anna Strathy
> Sent: Friday, September 08, 2017 12:34 PM
> To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
> Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
> Adding myself to this email chain.
>
> Anna
>
> -----Original Message-----
> From: Gadi Mayman
> Sent: Friday, September 08, 2017 12:14 PM
> To: Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: Fw: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
>
>  Original Message
> From: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
> Sent: Friday, September 8, 2017 12:08 PM
> To: Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman
> Cc: Mike Manning
> Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
>
> Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>  Original Message
> From: Mike Manning
> Sent: Friday, September 8, 2017 12:04
> To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
> Cc: Manning, Mike (OFA)
> Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>

>
> OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter.  Hope this is helpful.
> Regards, Mike
>
> -----Original Message-----
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Friday, September 08, 2017 11:39 AM
> To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
> Slightly different question. Have you seen a draft of the financing plan or know when it might be available?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Hanslep, Malle (MOF)
> Sent: Friday, September 8, 2017 11:36
> To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
> Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
>
> Yes we just got this from Energy
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Mike Manning
> Sent: Friday, September 8, 2017 11:02
> To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
> Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
>
> Hi Guys:
> Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.
>
> Mike
>
> From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
> Sent: Thursday, September 07, 2017 4:20 PM
> To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
> Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt
>
> Dear James,
>
> During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).
>

> When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.
>
> We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.
>
> When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.
>
> Please find attached a note describing the proposed terms of the option.
>
> Let us know if you have any questions or comments, or if this should be directed to someone else.
>
> Regards,
>
> Les
>
> Leslie Wong
> Senior Counsel
> Ontario Power Generation Inc.
> 700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
> T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>
>
> _____
>
> THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Cc:** | Mike Manning |
| **Subject:** | Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 12:08:46 PM |

---

Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:04
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Cc: Manning, Mike (OFA)
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly $2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and

may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Subject:** | Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 11:39:17 AM |

---

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Mike Manning; Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman |
| **Subject:** | Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 11:36:08 AM |

---

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong

Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON  M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine |
| **Cc:** | Anna Strathy; Ken Kandeepan; Ronald Kwan |
| **Subject:** | Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt |
| **Date:** | Friday, September 08, 2017 1:19:51 PM |

---

I'm entirely in line with your thoughts, Mike. My understanding is that vote whole reason that they had to do their own debt was to put risk on themselves, not transfer it all over to the Province.
Gadi

Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:37 PM
To: Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ken Kandeepan; John Kim; Carlos Yep; James Devine; Gadi Mayman
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

No it wouldn't, but that is a good question. I have been assuming that the provincial support agreement would only apply to the 51% senior debt, but OPG just let me know that the subordinated debt will be quite a bit more expensive without a provincial support agreement. Roughly, they currently estimate that the senior debt will be priced 20-25 bps over the Province of Ontario. The subordinated they see about 100 bps back of the Senior if it has a provincial support agreement. They are now indicating, based on dealer feedback, that without a provincial support agreement, the subordinated will be about 100-200 bps more expensive if it doesn't have a provincial support agreement. Anyway, I don't think we should be expanding the support to the subordinated debt as this will greatly increase the Province's exposure. We may have to address ways to keep the subordinated more cost-effective. Thoughts appreciated.

Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 12:09 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Would the late September early Oct:ober issuance be expected to benefit from the provincial support agreement?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Mike Manning
Sent: Friday, September 8, 2017 12:04
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Cc: Manning, Mike (OFA)
Subject: RE: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

OPG doesn't have a full financing plan at this time. I believe they are hoping to firm up numbers from Energy fairly shortly, before they meet the ratings agencies. They are currently thinking of issuing $300 to $500 million in late September/early October. Roughly $125 million of this will be to fund the subordinated (5% requirement on roughly

$2.5 billion of annual funding). The senior debt (the 51% that we are focussing on) is roughly planned for late November with roughly $400 million of issuance and then follow-up issuance on a fairly regular basis thereafter. Hope this is helpful.
Regards, Mike

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 08, 2017 11:39 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Slightly different question. Have you seen a draft of the financing plan or know when it might be available?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 11:36
To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: Re: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Yes we just got this from Energy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 11:02
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kim, John (OFA); Yep, Carlos (OFA); Devine, James (OFA); Mayman, Gadi (OFA)
Subject: FW: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Hi Guys:
Not sure if you have seen this but passing it along. We may want to have this option, but running out of time.

Mike

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: Thursday, September 07, 2017 4:20 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: Fair Hydro - Option for Province to Cure Default before Acceleration of Debt

Dear James,

During the discussions of the Provincial guarantee at a recent Thursday rate mitigation meeting, OPG raised the issue of potential acceleration of financing entity debt where the guarantee is not applicable. That would occur if there is an event of default (e.g. if the trust is not able to pay/service the debt) for a reason that doesn't trigger the guarantee (e.g. for a reason other than a change of the legislation).

When there is an acceleration, all of the principal amount becomes due and a large payment would need to be made by the financing entity to bondholders. If the acceleration occurs after the moratorium period, the amount payable to bondholders would be put through the Clean Energy Adjustment to specified consumers. That could result in a significant increase in consumer bills in a short period of time.

We understand that the Province may not want consumers to experience such a sharp bill increase. We discussed the Dealers whether the Province could be given the option to cure an event of default of a financing entity before it results in acceleration of debt. The Dealers were amenable to providing this option.

When we raised this possibility, the Province indicated it would like to have such an option, and asked us to put together a note describing the terms.

Please find attached a note describing the proposed terms of the option.

Let us know if you have any questions or comments, or if this should be directed to someone else.

Regards,

Les

Leslie Wong
Senior Counsel
Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6
T: (416) 592-3110 | E: leslie.wong@opg.com<mailto:leslie.wong@opg.com>

---

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ramchandani, Rima |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Mansoori, Nina; Tobias P. Whitfield (MOF); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Thouin, Alena (ENERGY); Tom McKinlay (MAG); STEPHEN.ASHBOURNE@blakes.com; LADAK Lubna -TREASURY; Emes, Aaron; Hill, Krista |
| **Subject:** | Re: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Monday, October 23, 2017 7:32:01 PM |

Hi Malle, we have asked Osler to accelerate circulation of the draft supplemental indenture for the long term debt — we hope to have that by mid-week and will send it you on receipt. As with the supp for the short term debt, the draft will not have been reviewed by Torys or OPG but in the interests of time, we will circulate it to you concurrently. We will also start including you on any circulations of revised drafts of the other agreements. Unless we hear differently, we will include you, Toby, Alena and Steve.

Regarding timing, we understand that the short term facility would close very soon after the long term issuance (from a workload perspective, we are treating them as closing almost concurrently). Closing of the long term debt is targeted for the first week of December and closing of the short term debt is targeted for the second week of December. Marketing of the long-term debt would occur in late November but only once we have concluded the rating agency process. The dealers have advised us that the rating agencies will be interested in understanding the change of law agreement in particular, which is why we have been focused on having that agreement circulated and substantially settled with the dealers and their counsel as soon as possible.

Please feel free to reach out if you would like to discuss live.

Thanks,
Rima

Sent from my iPhone

On Oct 22, 2017, at 9:43 AM, Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>> wrote:

Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province should one of the events as set out in the term sheet occur. The Province has not determined whether the approach suggested to separate the two documents is appropriate. If it is the proposed long term financing that is planned to be done by year-end and there is a desire to substantially settle the terms of the Protection Agreement by the early November, I don't understand why a draft of the long term financing supplemental indenture would not be available for review yet.

When is it expected that the warehousing facility would be put in place?

Thanks.

Malle

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 21, 2017 11:28 PM
To: Whitfield, Tobias P. (MOF)
Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan,

Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,
Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada |
www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIFaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=zr43Tg5clKmOpDbgwB9Yh--5G5Krw1pNzPMH3jjfpMs&s=2kxcRJIgpzcMuzoYnp26WsJW-HQhxdaqPvoTcNpZKpo&e= >

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-21-17 8:53 AM
To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Cc: 'LEE John -TREASURY' <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA)

<Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF)
<John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)
<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA)
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA)
<Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA)
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>;
'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -
TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Emes, Aaron
<aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina
<nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456
From: Mansoori, Nina
Sent: Friday, October 20, 2017 10:23 AM
To: Whitfield, Tobias P. (MOF)
Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Mansoori, Nina
Sent: October-18-17 9:53 AM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com><mailto:nmansoori@torys.com>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com><mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com><mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com><mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com> <mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com> <mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com> <mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca><mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca> <mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca><mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca> <mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca><mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca> <mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca><mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca><mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca> <mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca><mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca> <mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca><mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca><mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca><mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca><mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca><mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca> <mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca><mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca> <mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com> <mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com><mailto:lubna.ladak@opg.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca><mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence -that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt -the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) -the negative pledge with respect to the exercise of certain options on the debt -the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect

to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>
<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>
<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>
<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV'
<leslie.wong@opg.com<mailto:leslie.wong@opg.com><mailto:leslie.wong@opg.com>>; LEE John -TREASURY
<john.s.lee@opg.com<mailto:john.s.lee@opg.com><mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY
<ken.ryfa@opg.com<mailto:ken.ryfa@opg.com><mailto:ken.ryfa@opg.com>>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>
<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA)
<Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca><mailto:Mike.Manning@ofina.on.ca>>;
Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>
<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca><mailto:Ronald.Kwan@ofina.on.ca>>;
Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>
<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca><mailto:Scott.Nelms@ontario.ca>>; Devine, James
(OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca><mailto:James.Devine@ofina.on.ca>>;
Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>
<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA)
<Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca><mailto:Anna.Strathy@ofina.on.ca>>; Cengarle,
John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca><mailto:John.Cengarle@ontario.ca>>;
Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>
<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)
<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca><mailto:Keley.Katona@ontario.ca>>; He, Gavin
(OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca><mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis
(OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca><mailto:Anis.Hirani@ofina.on.ca>>; Kim,
John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca><mailto:John.Kim@ofina.on.ca>>; Veinot,

Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca><mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca> <mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca><mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca> <mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com> <mailto:STEPHEN.ASHBOURNE@blakes.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca><mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada |
www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIFaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=zr43Tg5clKmOpDbgwB9Yh--5G5Krw1pNzPMH3jjfpMs&s=2kxcRJIgpzcMuzoYnp26WsJW-HQhxdaqPvoTcNpZKpo&e= >
<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIFaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=zr43Tg5clKmOpDbgwB9Yh--5G5Krw1pNzPMH3jjfpMs&s=2kxcRJIgpzcMuzoYnp26WsJW-HQhxdaqPvoTcNpZKpo&e= >

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwIFaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=zr43Tg5clKmOpDbgwB9Yh--5G5Krw1pNzPMH3jjfpMs&s=yMTwtWuCs9m5MmUrnZwYfHMFBIgCOu8EiYZkj9eDXXY&e= >

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com> <mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca><mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca> <mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com><mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com><mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com><mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com><mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com> <mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com> <mailto:nmansoori@torys.com>>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires

concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Mike Manning
**To:** Ken Kandeepan
**Cc:** James Devine; Carlos Yep; Ronald Kwan; John Kim; John Psinas
**Subject:** Re: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Monday, October 23, 2017 6:14:36 PM

---

Agree, we should probably re-assess where we are fairly shortly.
Mike

Sent from my iPad

On Oct 23, 2017, at 4:33 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Mike and others
>
> Not sure if you had an opportunity to review this but I did go through quickly and if you read past all of the legal terms and conditions including the language it seems to set out a reasonable process for the Province's review of debt issues by the Financing Entity to ensure that they fall within the terms and conditions of the Protection Agreement.
>
> Page 5 details what will be provided to us prior to each issuance, maybe we can have a discussion with MOF Legal and Steve Ashbourne.
>
> Thanks
>
> Ken k
>
> ---
>
> **From:** Mansoori, Nina [mailto:nmansoori@torys.com]
> **Sent:** Friday, October 20, 2017 10:23 AM
> **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> **Cc:** 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; 'Cengarle, John (MOF)' <John.Cengarle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; 'Thouin, Alena (ENERGY)' <Alena.Thouin@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com'

<STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Mansoori, Nina
**Sent:** October-18-17 9:53 AM
**To:** 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement

(blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

**Accounting Issues:**
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded?

Please advise why taxes are being excluded?

- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

Tobias Whitfield

Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

TORYS LLP[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims

relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

<Change of Law Procedures Agreement - Fair Hydro.DOCX>

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Mansoori, Nina |
| **Cc:** | "LEE John -TREASURY"; "RYFA Ken -TREASURY"; "WONG Leslie -LAWDIV"; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Mark Donaldson (MOF); Mike Manning; Gadi Mayman; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Anna Strathy; Cengarle, John (MOF); Ronald Kwan; Keley Katona (ENERGY); Gavin He; Anis Hirani; John Kim; Veinot, Cindy (TBS); Malle Hanslep (MOF); Thouin, Alena (ENERGY); Tom McKinlay (MAG); "STEPHEN.ASHBOURNE@blakes.com"; "LADAK Lubna -TREASURY"; Emes, Aaron; Mansoori, Nina |
| **Subject:** | Re: Fair Hydro -- Change of Law Assumption Agreement |
| **Date:** | Saturday, October 21, 2017 8:52:45 AM |

---

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456
From: Mansoori, Nina
Sent: Friday, October 20, 2017 10:23 AM
To: Whitfield, Tobias P. (MOF)
Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Mansoori, Nina
Sent: October-18-17 9:53 AM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)

<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA)
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA)
<Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA)
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -
TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
-the negative pledge with respect to the exercise of certain options on the debt
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario  M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vTznLE3mGnW2eGmTNG6RWQkgXdBI5BCAcOs8KW_Qsac&s=PttWNXJ7s-lFJG3lgytW01b7utZVoJEB1AsgtKqtJHU&e= >

[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=vTznLE3mGnW2eGmTNG6RWQkgXdBI5BCAcOs8KW_Qsac&s=RPTjRv7VeH_K-Ve5f4HiOM3tZU8lfwlVfjt2RHUBVnk&e= >

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into

the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Ken Kandeepan
**To:** Ronald Kwan
**Cc:** Gadi Mayman; Mike Manning; Anna Strathy
**Subject:** Re: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Thursday, October 19, 2017 11:17:24 AM

---

Ron is correct, essentially if the protection agreement kicks in the Province assumes responsibility for all payments to swap counterparties.

Thanks

Ken k

On Oct 19, 2017, at 10:30 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Gadi,
> Mike and Ken may have more to add, but I believe the TB submission noted the following (emphasis added):
>
> > In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. *In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make*.
>
> Ron
>
> ---
>
> **From:** Gadi Mayman
> **Sent:** October-19-17 09:28
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** Fwd: Fair Hydro -- Change of Law Assumption Agreement
> I see in Nina's email a reference to ISDA. Are we, under the change of law assumption agreement, guaranteeing any swaps that OPG trust may enter?
>
> Begin forwarded message:
>
> > **From:** "Mansoori, Nina" <nmansoori@torys.com>
> > **Date:** October 19, 2017 at 9:17:25 AM EDT
> > **To:** "'Hanslep, Malle (MOF)'" <Malle.Hanslep@ontario.ca>
> > **Cc:** LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>,

"Ramchandani, Rima" <rramchandani@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Manning, Mike (OFA)" <Mike.Manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <Ken.Kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <Scott.Nelms@ontario.ca>, "Devine, James (OFA)" <James.Devine@ofina.on.ca>, "Yep, Carlos (OFA)" <Carlos.Yep@ofina.on.ca>, "Strathy, Anna (OFA)" <Anna.Strathy@ofina.on.ca>, "Cengarle, John (MOF)" <John.Cengarle@ontario.ca>, "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>, "Katona, Keley (MOF)" <Keley.Katona@ontario.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Hirani, Anis (OFA)" <Anis.Hirani@ofina.on.ca>, "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>, "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>, "'STEPHEN.ASHBOURNE@blakes.com'" <STEPHEN.ASHBOURNE@blakes.com>, "'LADAK Lubna -TREASURY'" <lubna.ladak@opg.com>, "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>, "Mansoori, Nina" <nmansoori@torys.com>

**Subject: RE: Fair Hydro -- Change of Law Assumption Agreement**

Good Morning Malle,

In terms of Program Agreements, here is an update:

-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.

-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.

-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).

-we'll have a form of ISDA Schedule to you soon.

-we don't expect to have a substantially advanced draft of the OM to share until November.

Please let me know if you have any questions.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** October-18-17 7:02 PM
**To:** Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle

Malle Hanslep
Deputy Director

Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457
Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY

<ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS);

Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG);
'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical

guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- <!--[if !supportLists]-->?<!--[endif]-->The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- <!--[if !supportLists]-->?<!--[endif]-->In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- <!--[if !supportLists]-->?<!--[endif]-->Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

<!--[if !supportLists]-->?<!--[endif]-->We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?

<!--[if !supportLists]-->?<!--[endif]-->There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.

<!--[if !supportLists]-->?<!--[endif]-->We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to

review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]
**Sent:** September 25, 2017 12:21 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

---

**From:** Ramchandani, Rima
**Sent:** September-19-17 9:55 PM
**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.
In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:
(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.
Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.
It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:
(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects,

respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les

documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Ken Kandeepan
**To:** Anna Strathy
**Cc:** Ronald Kwan; Mike Manning; Usman Zahid
**Subject:** Re: Fair Hydro -- Change of Law Assumption Agreement
**Date:** Wednesday, October 25, 2017 3:42:37 PM

---

I have FES sign off from 10 to 12 pm tomorrow, I can go around 11 so good if the meeting is scheduled from 9.30 or so

On Oct 25, 2017, at 2:59 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron, Ken, Mike,
> Toby has asked me to set up a meeting to discuss the attached discussion document drafted by Stephen Ashbourne. Toby and Malle have a preference for tomorrow morning, but I wanted to choose a time that would be convenient for all three of you. Any preferences for tomorrow morning/afternoon or Friday?
> Thanks, Anna
>
> **From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> **Sent:** Wednesday, October 25, 2017 1:05 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
> Anna – can you please set up a meeting to discuss the Agreement and the questions we circulated yesterday?
> It would be helpful if we can make sure that decision makers are there and able to give some direction. Maybe it is worthwhile canvassing Gadi, Mike and Ken about whether they will be able to attend/who should attend in order to be able to give direction on our response/next steps.
> Thanks
> Toby
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca
> Phone: 416-325-1456
>
> **From:** Whitfield, Tobias P. (MOF)
> **Sent:** October 24, 2017 1:00 PM
> **To:** Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Strathy, Anna (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas
> **Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement
> Further to OPG's response to our proposals, please find attached a discussion document drafted by our outside legal counsel Stephen Ashbourne and based on discussions amongst our Provincial legal teams.
> This document sets out a number of questions that we need to consider and answer in

order to respond to OPG with the Province's position.
A meeting amongst this group would be useful to discuss these issues and to inform a response to OPG.
Best
Toby
Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 18, 2017 9:53 AM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.
Best Regards,
Nina
Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** October-13-17 4:47 PM
**To:** Mansoori, Nina <nmansoori@torys.com>
**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>;

Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Mansoori, Nina [mailto:nmansoori@torys.com]
**Sent:** October 6, 2017 5:58 PM
**To:** Whitfield, Tobias P. (MOF)
**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual

comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

**Accounting Issues:**

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt

-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

**Practical Issues:**

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province

under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

**Drafting Issues:**

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori
P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** September-27-17 4:21 PM
**To:** Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie - LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
**Cc:** Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA)

<Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

---

**From:** Ramchandani, Rima [mailto:rramchandani@torys.com]

**Sent:** September 25, 2017 12:21 PM

**To:** 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

**Cc:** LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

**Subject:** RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani
P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

---

**From:** Ramchandani, Rima

**Sent:** September-19-17 9:55 PM

**To:** 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>

**Cc:** LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>

**Subject:** Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

**Obligor Approval**

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.
(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.
(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.
(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.
At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.
P. 416.865.7666

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

<12917730-v1-Questions (Adherence Conditions).docx>

**From:** Mike Manning
**To:** Malle Hanslep (MOF)
**Cc:** Tobias P. Whitfield (MOF); Opal Kandelas; Sarah Harris
**Subject:** Re: Fair Hydro -- Form of ISDA Schedule
**Date:** Tuesday, October 24, 2017 6:48:40 PM

---

I think that is a good idea. We may need all hands on deck.
Thanks, Mike

Sent from my iPhone

On Oct 24, 2017, at 5:36 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Mike
>
> Although we are not really going to give much input to the terms of the, various agreements etc I am wondering whether it makes sense to have the documentation group involved in this project. I know that Opal came to one of the early meetings as there are going to be quite a few agreements to review.
>
> Perhaps we can discuss this tomorrow?
>
> Thanks
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Mansoori, Nina <nmansoori@torys.com>
> Sent: Tuesday, October 24, 2017 17:21
> To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
> Cc: Feldman, Michael; Ramchandani, Rima; Olusoga, Yinka; Saulnier, Brett; Mansoori, Nina
> Subject: RE: Fair Hydro -- Form of ISDA Schedule
>
> All,
>
> We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.
>
> Best Regards,
> Nina
>
> Nina Mansoori
> P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
> 79 Wellington St. W., 30th Floor, Box 270, TD South Tower
> Toronto, Ontario M5K 1N2 Canada |
> www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-

40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=1VTa1zXh4KcvkaKlO9-ARX4ZdAPchHFOUlZrzzbEKu8&s=WV1r2al3I6I7hp4_ENGNsOCi-ONgrumWNDvMZJ5snis&e= >

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

<Fair Hydro – Form of ISDA Schedule.docx>

**From:** Mike Manning
**To:** Ken Kandeepan
**Cc:** Carlos Yep; James Devine
**Subject:** Re: Fair Hydro Plan Protocol Agreement
**Date:** Wednesday, November 15, 2017 6:46:40 AM

---

Been trying to get to this one. Hopefully today.
Mike

On Nov 14, 2017, at 7:15 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Mike et al
>
> Could we pls meet on this for 15 minutes tomorrow and provide comments to OPG.
>
> Thanks
>
> Ken K
>
> ---
>
> **From:** LIU Sheen -TREASURY [mailto:sheen.liu@opg.com]
> **Sent:** Tuesday, November 07, 2017 1:23 PM
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** PRESTON Stuart -TREASURY <stuart.preston@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>
> **Subject:** Fair Hydro Plan Protocol Agreement
>
> Ken,
>
> As you're aware we are currently working on drafting the Protocol Agreement re Sub Debt under the Fair Hydro Plan. Attached for you review please find the key terms re the Agreement, including procedure for advance, as well as price setting, etc. Please let us know if you have any comments/thoughts.
>
> Please be advised that FHP financing will include both a short term warehouse facility (ABCP conduit) and term debt.
>
> Thanks
>
> Sheen
>
> ---

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

<Fair Hydro- Subordinated Notes_LT funding Protocol-V2.doc>

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Re: Follow-up
**Date:** Friday, September 08, 2017 2:08:50 PM

---

Toby is sending a meeting invitation. You could also callhim for an update

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 13:51
To: Hanslep, Malle (MOF)
Subject: Follow-up

Hi Malle:
Any thought on timing for follow-up on Fair Hydro issues?

Thanks, Mike

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Re: Follow-up
**Date:** Friday, September 08, 2017 3:19:48 PM

---

I am at a meeting so unable to return your call until a bit later.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hanslep, Malle (MOF)
Sent: Friday, September 8, 2017 14:08
To: Manning, Mike (OFA)
Cc: Whitfield, Tobias P. (MOF)
Subject: Re: Follow-up

Toby is sending a meeting invitation. You could also callhim for an update

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 8, 2017 13:51
To: Hanslep, Malle (MOF)
Subject: Follow-up

Hi Malle:
Any thought on timing for follow-up on Fair Hydro issues?

Thanks, Mike

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning; Ken Kandeepan; Ronald Kwan; John Kim; Carlos Yep; James Devine |
| **Cc:** | Anna Strathy |
| **Subject:** | Re: For our discussion |
| **Date:** | Thursday, November 09, 2017 4:55:26 PM |

Malle and I just went over this and had a good discussion. She's going to share this list with Steve and talk to him about what we think is important and what isn't. Mike and I had a conversation just before I spoke to Malle, and the Force Majeure may not be an issue after his conversation with John Lee, and Malle felt that having the Trustee sign the agreement was important. As for the rest, she will have to give it some thought and analysis.

Thanks for all of your help on this.

Gadi

---

**From:** Gadi Mayman
**Sent:** Thursday, November 9, 2017 4:32 PM
**To:** Malle Hanslep (MOF); Tobias P. Whitfield (MOF)
**Cc:** Anna Strathy; Mike Manning; Ken Kandeepan; Ronald Kwan
**Subject:** For our discussion

Process Agreement

- 2.01 Deliveries to the Province
  - No concerns with removing PILS/tax language
- 2.02 Covenants
  - First use of *commercially reasonable efforts* and then throughout
  - Need legal opinion on whether to change to *best efforts*
- 2.02 (b) (iv) Province to review any description of the protection agreement
  - No concerns with this deletion
  - OPG likely to use boilerplate description of the guarantee
- 2.02 (c) Indemnity
  - No concerns, likely a requirement for OPG Board
- 4.01 Protection Agreement Maximum
  - CRITICAL – we can be flexible on the wording but we can't agree to removing Provincial approval of a maximum – compromise option would be to use the Financing Plan number as the Protection Agreement Maximum, the plan will be reviewed by MOE and the assumptions rigorously vetted.
  - Subject to OPCD review/input
- 5.02 Reps and Warranties of the Province
  - No concerns

Protection Agreement

- Need to review the Indemnity Agreement
- 1.17 References to the Financing Entity

    - No concerns with removing Trustee
- 2.09c Modifications of Approved Obligations
    - Why not seek consent of the Province when changing its obligations?
- Article V
    - Edit title to ***Provincial*** *Matters*
- 5.01 Assignment and Subrogation
    - Why remove the subrogation after the Province has taken on the obligations?
- 7.04 Release of All Collateral
    - What is meant by collateral? Would it include sinking funds? If it does, the Province should get the sinking funds, not leave them with OPG
- 9.07 Force Majeure
    - Why remove the Force Majeure clause?

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan |
| **Cc:** | Gadi Mayman; Mike Manning; Ken Kandeepan |
| **Subject:** | Re: KMs and Q&As |
| **Date:** | Sunday, October 15, 2017 7:40:07 PM |

---

Thanks Ron. I'm expecting that we'll have an opportunity to provide input after the 8am meeting tomorrow. I'll make sure that your comments are passed on.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 15, 2017, at 12:57 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
> Slide 4 seems to use 17-18 numbers that are full-year estimates.
> The approved Ministry of Energy Estimates for 17-18, which are public at https://www.ontario.ca/page/expenditure-estimates-ministry-energy-2017-18#section-3, shows the amounts based on in-year implementation timelines. It would seem to make more sense to go with 17-18 numbers consistent with Estimates, unless Energy and TBS have a good rationale to do otherwise.
> I believe the pro-rated numbers were also provided to the FAO when we were interacting with FAO staff prior to the FAO report in the spring.
> On slides 5 and 9, should the last bullet be amended? I'm not sure "consulted with" is the right way to position the role of third party, external auditors (KPMG and E&Y). It might be better to have separate sentences or bullet for describing the role of the external auditors. Ken and OPCD may have a view on that.
> On slide 8, the first bullet, I think the distinction between OPG and the financing entity should be maintained – "sold to a financing entity (e.g., a trust ) established by OPG…."
> Ron
>
> ---
>
> **From:** Anna Strathy
> **Sent:** October-14-17 9:56 AM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** Fwd: KMs and Q&As
> FYI deck for technical briefing attached, with input from IESO pending.
> Q&As coming later today.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:

**From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
**Date:** October 13, 2017 at 8:00:41 PM EDT
**To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
**Subject: RE: KMs and Q&As**

Hi everyone,
Attached is an updated deck based on a discussion with our MO this afternoon. This version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
We've sent IESO the slide for feedback and input. The text that is currently on IESO's slide was from TBS. We will share a new version once we receive that input.
The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS.
For Monday morning's meeting we will use the technical deck and QAs.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 6:30 PM
**To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** Re: KMs and Q&As
Yes, we will share back the consolidated version once we have incorporated everything.
Thanks.
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As
Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,
Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.
Thanks
Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As
Thanks, Anna.
Allison how are we doing on TBS input?
Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Martin,
Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.
Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.
Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Attached is a first draft of the technical deck for review and input.
Sorry for the short turnaround but we will need this for the weekend.
Any status update on the QAs?
Thanks,
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS)

<Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As
Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS)

<Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As
Hi David,
Coordinating sounds good to me.
Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As
Hi guys,
In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.
I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.
-ENE: financing and policy intent
-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Anna Strathy
**To:** Ronald Kwan
**Cc:** Ken Kandeepan; Gadi Mayman; Mike Manning
**Subject:** Re: KMs and Q&As
**Date:** Friday, October 13, 2017 5:23:08 PM

---

I haven't seen the consolidated mark-up yet, but I'll forward momentarily what I submitted to Martin.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 13, 2017, at 5:13 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Thanks Anna.
> Would you have the final markup, or a revised version from MOF / Energy, following input from us and TBS?
> Ron
>
> **From:** Anna Strathy
> **Sent:** October-13-17 15:31
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: KMs and Q&As
> Thank you both, appreciate the comments.
>
> **From:** Ronald Kwan
> **Sent:** Friday, October 13, 2017 3:22 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: KMs and Q&As
> Hi,
> I had a conflict and missed the call, so I can't speak to the inclusion or not of the OEFC financing point. However, if there is an OEFC financing point, would it be more appropriately stated that the old Ontario Hydro (and as continued as OEFC) was (and is) charged a provincial Debt Guarantee Fee (of 50 bps) to reflect, in part, a financing cost differential and impact on the Province of supporting electricity sector borrowing for investments, which was a reasonable cost of capital for the electricity sector to carry?
> (And a small copy edit, if it is retained "Ontario Electricity *Financial* Corporation".)
> Ron
>
> **From:** Ken Kandeepan
> **Sent:** October-13-17 14:11
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>

**Subject:** RE: KMs and Q&As
Not really Anna but that may be only because it was very hard to follow all the comments on the phone.
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 2:10 PM
**To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Thank you, Ken. You will likely recall better than I will, but I thought – in the Deputy's briefing – our Deputy wasn't keen on the OEFC loan comparison. Do you recall?

---

**From:** Ken Kandeepan
**Sent:** Friday, October 13, 2017 2:00 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Hi Anna
Pls see my one comment and edits.
Thanks
Ken k

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 1:40 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** RE: KMs and Q&As
Please find attached, my own edits in track changes. Please feel free to work off of this version, if you hadn't started already.
Thanks, Anna

---

**From:** Anna Strathy
**Sent:** Friday, October 13, 2017 12:57 PM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
**Subject:** FW: KMs and Q&As
Good afternoon,
Ministry of Energy has taken the lead on preparing Q&As (attached) to support our Ministers upon release of the AG's report on the Fair Hydro Plan (release is expected to be imminent). Energy has asked OFA to review the highlighted question on page four, which they've pulled from speaking points the OFA prepared for Minister Sousa. Gadi, I note they've taken the response verbatim from what we submitted, so I don't expect it will require further editing; however, there could be other questions that the OFA would like to weigh in on.
Please review the attached and send me your edits in track changes by 3:00pm. Ali has asked for materials by 4:00pm today.
Thank you, Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 9:36 AM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS)

<Allison.Ue@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As

Hi Folks,

Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.

Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As

Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,

In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.

I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.

-ENE: financing and policy intent

-OFA: financing
-TBS: accounting
Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.
Thanks,
Dave

Sent with BlackBerry Work
(www.blackberry.com)

**From:** Anna Strathy
**To:** Ronald Kwan
**Cc:** Gadi Mayman; Mike Manning; Ken Kandeepan
**Subject:** Re: KMs and Q&As
**Date:** Monday, October 16, 2017 8:30:17 AM

---

Thanks Ron. And thank you for catching the question that required OFA input.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 16, 2017, at 12:55 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
> And some suggestions on the TBS set of Qs&As too.
> Ron
>
> **From:** Anna Strathy
> **Sent:** October-15-17 7:40 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Re: KMs and Q&As
> Thanks Ron. I'm expecting that we'll have an opportunity to provide input after the 8am meeting tomorrow. I'll make sure that your comments are passed on.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Oct 15, 2017, at 12:57 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Anna,
> > Slide 4 seems to use 17-18 numbers that are full-year estimates.
> > The approved Ministry of Energy Estimates for 17-18, which are public at https://www.ontario.ca/page/expenditure-estimates-ministry-energy-2017-18#section-3, shows the amounts based on in-year implementation timelines. It would seem to make more sense to go with 17-18 numbers consistent with Estimates, unless Energy and TBS have a good rationale to do otherwise.
> > I believe the pro-rated numbers were also provided to the FAO when we were interacting with FAO staff prior to the FAO report in the spring.
> > On slides 5 and 9, should the last bullet be amended? I'm not sure "consulted with" is the right way to position the role of third party, external auditors (KPMG and E&Y). It might be better to have separate sentences or bullet for describing the role of the external auditors. Ken

and OPCD may have a view on that.
On slide 8, the first bullet, I think the distinction between OPG and the financing entity should be maintained – “sold to a financing entity (e.g., a trust ) established by OPG….”
Ron

---

**From:** Anna Strathy
**Sent:** October-14-17 9:56 AM
**To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
**Subject:** Fwd: KMs and Q&As
FYI deck for technical briefing attached, with input from IESO pending.
Q&As coming later today.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

> **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> **Date:** October 13, 2017 at 8:00:41 PM EDT
> **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> **Subject: RE: KMs and Q&As**
>
> Hi everyone,
> Attached is an updated deck based on a discussion with our MO this afternoon. This version also incorporates comments from TBS. There is also a place holder for IESO input on its slide.
> We’ve sent IESO the slide for feedback and input. The text that is currently on IESO’s slide was from TBS. We will share a new version once we receive that input.
> The QAs will likely come Saturday as folks are working to consolidate the input we received from the OFA and TBS. For Monday morning’s meeting we will use the technical deck and QAs.
> Thanks,
> Martin
>
> ---
>
> **From:** Schlaepfer, Martin (ENERGY)

**Sent:** October 13, 2017 6:30 PM
**To:** Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** Re: KMs and Q&As

Yes, we will share back the consolidated version once we have incorporated everything.
Thanks.
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** Friday, October 13, 2017 6:24 PM
**To:** Hosick, Sarah (TBS); Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Here are the QAs and KMs. Could we see a consolidated version? I'm sure there are areas in which we could streamline/reduce redundancies.

---

**From:** Hosick, Sarah (TBS)
**Sent:** October 13, 2017 5:55 PM
**To:** Schlaepfer, Martin (ENERGY); Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As

Hi Martin,
Attached are our edits to the deck in red. TBS Comms is just reviewing our edits to the TBS QAs and key messages, then will send over.
Thanks
Sarah

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 5:32 PM
**To:** Strathy, Anna (OFA); Ue, Allison (TBS); McLean, David (MOF); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
**Subject:** RE: KMs and Q&As

Thanks, Anna.
Allison how are we doing on TBS input?
Martin

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 5:05 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS)

<Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Martin,
Apologies for the delay. Please find attached, OFA input (in track changes) to the Q&As.
Note, the only change from the earlier draft I sent you, is the highlighted sentence on p. 4.
Anna

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 3:23 PM
**To:** Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Patrick Laughton (MOF) <Patrick.Laughton@ontario.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Attached is a first draft of the technical deck for review and input.
Sorry for the short turnaround but we will need this for the weekend.
Any status update on the QAs?
Thanks,
Martin

---

**From:** Ue, Allison (TBS)
**Sent:** October 13, 2017 1:47 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; McLean, David (MOF) <David.McLean@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
**Subject:** RE: KMs and Q&As
Our pieces are going through approvals as well.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** October 13, 2017 1:42 PM
**To:** Schlaepfer, Martin (ENERGY); McLean, David (MOF); Ue, Allison (TBS); Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Cox, Hilary (ENERGY)
**Subject:** RE: KMs and Q&As
Hi Martin, my comments and edits are with Gadi for review. When do you need our input?

---

**From:** Schlaepfer, Martin (ENERGY) [mailto:Martin.Schlaepfer@ontario.ca]
**Sent:** Friday, October 13, 2017 1:24 PM
**To:** David McLean (MOF) <David.McLean@ontario.ca>; Allison Ue (MCSS) <Allison.Ue@ontario.ca>; Patrick

Laughton (MOF) <Patrick.Laughton@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Kyle MacIntyre (MOF) <Kyle.MacIntyre@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
How are we doing on these? I need to share these with my Deputy for review before they can be shared with political staff.
Thanks,
Martin

---

**From:** Schlaepfer, Martin (ENERGY)
**Sent:** October 13, 2017 9:36 AM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>
**Subject:** RE: KMs and Q&As
Hi Folks,
Here is an initial draft for folks to work on. We have highlighted a couple in yellow that pertain to OFA / TBS (these were crafted based on the Minister's speaking remarks). Can we please work of this version as a base and track changes. Please add questions as necessary.
Please note these are not Deputy or MO approved on our end so please treat as appropriate and expect changes.
Thanks,
Martin

---

**From:** McLean, David (MOF)
**Sent:** October 12, 2017 10:38 PM
**To:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>; Ue, Allison (TBS) <Allison.Ue@ontario.ca>; Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; MacIntyre, Kyle (TBS) <Kyle.MacIntyre@ontario.ca>
**Subject:** RE: KMs and Q&As
Awesome, that's music to my ears.

Sent with BlackBerry Work
(www.blackberry.com)

---

**From:** Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
**Date:** Thursday, Oct 12, 2017, 10:09 PM
**To:** McLean, David (MOF) <David.McLean@ontario.ca>, Ue, Allison (TBS) <Allison.Ue@ontario.ca>, Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>, Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>, MacIntyre, Kyle (TBS)

<Kyle.MacIntyre@ontario.ca>
**Subject:** Re: KMs and Q&As

Hi David,

Coordinating sounds good to me.

Folks here have already begun on comprehensive comms materials, so we'll have stuff on all components.

Thanks,

Martin

---

**From:** McLean, David (MOF)
**Sent:** Thursday, October 12, 2017 8:16 PM
**To:** Schlaepfer, Martin (ENERGY); Ue, Allison (TBS); Laughton, Patrick (TBS); Strathy, Anna (OFA); MacIntyre, Kyle (TBS)
**Subject:** KMs and Q&As

Hi guys,

In anticipation of an impending release of the AG report, our Chief has requested key messages and Q&As for our Minister by 4:00 tomorrow.

I suspect these materials would benefit our Ministers equally, so I'd like to suggest we divvy up the responsibility the same way we did for the speaking points, addressing the key assertions of the report, and then I'll compile.

-ENE: financing and policy intent

-OFA: financing

-TBS: accounting

Would you guys be amenable to providing material to me by 2:30 tomorrow? I'll then flip to everyone and we can share with our respective MOs.

Thanks,

Dave

Sent with BlackBerry Work
(www.blackberry.com)

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | LEE John -TREASURY |
| **Cc:** | RYFA Ken -TREASURY; Scott Nelms (ENERGY) |
| **Subject:** | Re: Most recent provincial support agreement |
| **Date:** | Wednesday, September 13, 2017 9:27:28 PM |

Hi John:
As you know we are running out of time for changes, but let's talk first thing tomorrow morning to explore our options.
Regards, Mike

Sent from my iPad

On Sep 13, 2017, at 5:08 PM, LEE John -TREASURY <john.s.lee@opg.com> wrote:

> Mike:
>
> Given your need to get something in front of the ministers for approval by Sept 26(?). I believe it would be helpful to have a working session with your lawyers and yourself to land on a version of the document that works for both sides and meets the accounting and commercial requirements for the transaction. A markup will be provided tomorrow which will reflect both external counsel and the dealers comments.
>
> Let me know your thoughts on this approach.
>
> John
>
> **John Lee | Vice President Treasurer |**
> Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
> 416.592.6392 | john.s.lee@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | LEE John -TREASURY |
| **Cc:** | RYFA Ken -TREASURY; Scott Nelms (ENERGY) |
| **Subject:** | Re: Most recent provincial support agreement |
| **Date:** | Thursday, September 14, 2017 6:53:29 AM |

Hi John:
Is there a time today that you would be available for such
a working session? Obviously quite a few people on our side will need to be involved and some coordination involved. I'm assuming this version incorporates input from your dealers. It would be useful to get the markup as soon as possible and may be useful to have a quick chat on the business issues prior to the business session.
Regards, Mike

Sent from my iPad

On Sep 13, 2017, at 5:08 PM, LEE John -TREASURY <john.s.lee@opg.com> wrote:

> Mike:
>
> Given your need to get something in front of the ministers for approval by Sept 26(?). I believe it would be helpful to have a working session with your lawyers and yourself to land on a version of the document that works for both sides and meets the accounting and commercial requirements for the transaction. A markup will be provided tomorrow which will reflect both external counsel and the dealers comments.
>
> Let me know your thoughts on this approach.
>
> John
>
> **John Lee | Vice President Treasurer |**
> Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |
> 416.592.6392 | john.s.lee@opg.com

**THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.**

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Ken Kandeepan |
| **Cc:** | Mike Manning; Malle Hanslep (MOF); Ronald Kwan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | Re: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:33:19 AM |

---

Mark is at the same meeting that I am, so I copied him on the last email. He's well aware of his Deputy's expressed concern.

> On Sep 14, 2017, at 8:27 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:
>
> I will call them right now, note that Cindy is still on vacation, hopefully Mark Donaldson is available.
>
> Thanks
>
>
>
> -----Original Message-----
> From: Mike Manning
> Sent: Thursday, September 14, 2017 8:25 AM
> To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: RE: Next step on support agreement
>
> Assuming we can meet this morning, I think OPCD participation would be critical. I have a call into John Lee and waiting for his callback.
> Mike
>
> -----Original Message-----
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Thursday, September 14, 2017 8:21 AM
> To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: RE: Next step on support agreement
>
> Thanks.  It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs.  Should OPCD reps also be attending?
>
> -----Original Message-----
> From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
> Sent: September 14, 2017 8:17 AM
> To: Manning, Mike (OFA)
> Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
> Subject: Re: Next step on support agreement
>
> OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.
>

>> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>>
>> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>>
>>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>>
>>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>>
>>>
>>> Sent from my iPad
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
>

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Malle Hanslep (MOF) |
| **Cc:** | Mike Manning; Ronald Kwan; Ken Kandeepan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy; Mark Donaldson (MOF) |
| **Subject:** | Re: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:32:15 AM |

---

Yes, everyone who has an interest in this should be there or on the phone, including Blakes, as the Deputy of TB just made it very clear that this has to be resolved this morning especially as this is going to TB now on the afternoon of the 25th not the 26th to accommodate their appearance at Estimates. This morning's discussion will have to be the last one on this topic.

> On Sep 14, 2017, at 8:20 AM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Thanks. It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs. Should OPCD reps also be attending?
>
> -----Original Message-----
> From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
> Sent: September 14, 2017 8:17 AM
> To: Manning, Mike (OFA)
> Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
> Subject: Re: Next step on support agreement
>
> OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.
>
>> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>>
>> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>>
>>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>>
>>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>>
>>>
>>> Sent from my iPad
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
>

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning |
| **Cc:** | Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | Re: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:17:21 AM |

---

OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.

> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>
> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>
>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>
>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>>
>>
>> Sent from my iPad

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning |
| **Cc:** | Ronald Kwan; Ken Kandeepan; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | Re: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 7:18:48 AM |

---

I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.

> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>
> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.
>
>
> Sent from my iPad

| | |
|---|---|
| **From:** | Gadi Mayman |
| **To:** | Mike Manning |
| **Cc:** | Malle Hanslep (MOF); Ronald Kwan; Ken Kandeepan; Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Anna Strathy |
| **Subject:** | Re: Next step on support agreement |
| **Date:** | Thursday, September 14, 2017 8:43:07 AM |

---

John is at this meeting as well, which is why he wouldn't have called you back. I just checked with Mark and John and they will both make themselves and whomever else they need for 10 o'clock. Can someone please set up a conference call number?

> On Sep 14, 2017, at 8:24 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>
> Assuming we can meet this morning, I think OPCD participation would be critical. I have a call into John Lee and waiting for his callback.
> Mike
>
> -----Original Message-----
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: Thursday, September 14, 2017 8:21 AM
> To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: RE: Next step on support agreement
>
> Thanks.  It would be helpful to know what specifically about the content of the term sheet does not meet their accounting needs.  Should OPCD reps also be attending?
>
> -----Original Message-----
> From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
> Sent: September 14, 2017 8:17 AM
> To: Manning, Mike (OFA)
> Cc: Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Strathy, Anna (OFA)
> Subject: Re: Next step on support agreement
>
> OPG is saying that the support agreement as written doesn't meet their accounting needs. This needs to be resolved this morning, and hopefully in a manner that doesn't affect what the Minister of Energy signed off yesterday, as he is now gone. Please arrange a meeting for this morning, ideally around 10 because it must end before 11 when I have to leave for a meeting that I can't miss.
>
>> On Sep 14, 2017, at 7:18 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:
>>
>> I believe the Minister of Energy signed the TB submission yesterday, so, unless I'm missing something about how the TB process works, the time for discussion is over and I'm not sure what the purpose of their working session would be.
>>
>>> On Sep 14, 2017, at 7:04 AM, Mike Manning <Mike.Manning@ofina.on.ca> wrote:
>>>
>>> OPG will be sending out their newest version of the support agreement today, hopefully first thing in the morning. I don't know any of the details at this time. John Lee is proposing a working session for today to work out the details. I have asked him to come back with potential timing for the session. Given our need to resolve these issues as soon as possible, this approach seems reasonable. Please let me know if you are ok with this approach, and I will share potential timing with you as I get more details. I've asked John to share the business issues prior to the session and will update you when I get more details.

>>>
>>>
>>> Sent from my iPad
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
>

**From:** Gadi Mayman
**To:** Mike Manning
**Cc:** Anna Strathy; Hresa Gavaris
**Subject:** Re: OFA role in reviewing fees
**Date:** Friday, September 01, 2017 4:30:04 PM

---

Thanks, Mike. We can set up some time on Tuesday to talk about this and other things that have happened while I've been away. Have a nice long weekend.

Gadi

---

**From:** Mike Manning
**Sent:** Friday, September 1, 2017 2:24 PM
**To:** Gadi Mayman
**Subject:** FW: OFA role in reviewing fees

Hi Gadi:
We can discuss the pros and cons next week. No commitment has been made, and John Lee has shared a few ideas which may limit our involvement.
Talk to you next week.
Mike

---

**From:** Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
**Sent:** Wednesday, August 30, 2017 5:10 PM
**To:** Mike Manning
**Subject:** OFA role in reviewing fees

Hi Mike,
DM of Energy was interested in whether OFA could play a role in reviewing the OPG trust fee structure on an ongoing basis. As you may know, Energy and OPG have been discussing how fees to act as financial services manager for the trust will be set for some time. OPG would like to use a traditional asset manager model (management fee based on AUM + performance fee). Energy would prefer to replace the fixed management fee with a "cost +" model that is reviewed and approved by the OEB.
Energy has received strong push back from OPG from an accounting perspective on this model and on OEB oversight. The DM was blue-skying and wondered whether OFA could step into the role of reviewer of the fee structure to ensure it was reasonable. This would help with optics and hopefully result in a more reasonable cost to ratepayers on an ongoing basis. I think OFA will be doing something similar on sub-debt so wondered if that could be extended.
I realize Gadi will need to weigh in on this, but if you have any preliminary thoughts that would be helpful. We have a meeting tomorrow AM with the broader group on OFHP and I will be asked this question. Any early insights would be much appreciated.
Thanks,
Scott

Scott Nelms
Government Business Enterprises | Ministry of Finance
7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca

**From:** Anna Strathy
**To:** Ken Kandeepan; Mike Manning
**Subject:** Re: OFHP Fees Regulation Meeting
**Date:** Monday, October 02, 2017 4:16:39 PM

---

Ken, Mike,

Gadi has a conflict, so he won't be attending this meeting tomorrow morning at 8:45am. Are you both available? I'll be there as well.

Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 2, 2017, at 3:29 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> > **Date:** October 2, 2017 at 3:24:39 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>
> > **Cc:** "Francesca Bungaro-Yemec (ENERGY)" <Francesca.Bungaro-Yemec@ontario.ca>, Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>
> > **Subject: Re: OFHP Fees Regulation Meeting**
> >
> > Thanks Martin. Please include Ken Kandeepan and Mike Manning from the OFA.
> >
> > --
> > Anna Strathy
> > Special Policy Advisor to the CEO
> > Ontario Financing Authority
> > 416.325.8032
> >
> > On Oct 2, 2017, at 3:10 PM, Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca> wrote:

Hi Anna,
We're looking to set up a meeting tomorrow with OPG, OFA and the OEB to discuss the OFHP Fees Regulation that is currently being drafted. This would be an internal meeting only with no political staff.
Francesca will be in touch with your office to find a mutually convenient time.
Let me know if you have any questions or concerns.
Thanks,
Martin

**Martin Schlaepfer**
Director of Operations
Deputy Minister's Office
Ministry of Energy
T: 416-326-7688
E: martin.schlaepfer@ontario.ca

**From:** Mike Manning
**To:** Anna Strathy
**Cc:** Ken Kandeepan
**Subject:** Re: OFHP Fees Regulation Meeting
**Date:** Monday, October 02, 2017 4:31:16 PM

---

Will attend, Mike
Thanks

Sent from my iPad

On Oct 2, 2017, at 4:16 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Ken, Mike,
>
> Gadi has a conflict, so he won't be attending this meeting tomorrow morning at 8:45am. Are you both available? I'll be there as well.
>
> Anna
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Oct 2, 2017, at 3:29 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:
>
> > FYI
> >
> > --
> > Anna Strathy
> > Special Policy Advisor to the CEO
> > Ontario Financing Authority
> > 416.325.8032
> >
> > Begin forwarded message:
> >
> > **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> > **Date:** October 2, 2017 at 3:24:39 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>
> > **Cc:** "Francesca Bungaro-Yemec (ENERGY)" <Francesca.Bungaro-Yemec@ontario.ca>, Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>
> > **Subject: Re: OFHP Fees Regulation Meeting**

Thanks Martin. Please include Ken Kandeepan and Mike Manning from the OFA.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 2, 2017, at 3:10 PM, Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca> wrote:

> Hi Anna,
>
> We're looking to set up a meeting tomorrow with OPG, OFA and the OEB to discuss the OFHP Fees Regulation that is currently being drafted. This would be an internal meeting only with no political staff.
>
> Francesca will be in touch with your office to find a mutually convenient time.
>
> Let me know if you have any questions or concerns.
>
> Thanks,
> Martin
>
> **Martin Schlaepfer**
> Director of Operations
> Deputy Minister's Office
> Ministry of Energy
> T: 416-326-7688
> E: martin.schlaepfer@ontario.ca

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Tobias P. Whitfield (MOF) |
| **Cc:** | Ken Kandeepan; Ronald Kwan; Mike Manning |
| **Subject:** | Re: Possible DM Briefing on Monday |
| **Date:** | Friday, November 17, 2017 4:15:47 PM |

---

Thanks. I will keep that open.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Anna Strathy
Sent: Friday, November 17, 2017 16:13
To: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Manning, Mike (OFA)
Subject: Possible DM Briefing on Monday

Stephen, Malle, Toby,

Just a head's up, our DMO will likely be organizing another meeting with the three Deputies (Finance, TBS, Energy), on Monday, November 20, likely sometime between 11am and 12:30pm and likely somewhere in Macdonald Block (900 Bay Street). The purpose of Monday's meeting will be to bring everyone up to speed on the outstanding issues on the Protection/Process Agreements. I expect an invite to follow, but you may want to hold that time in your calendars for now.

Thank you,

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca<mailto:anna.strathy@ofina.on.ca>

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Gadi Mayman
**To:** Scott Nelms (ENERGY); Mike Manning
**Cc:** Anna Strathy
**Subject:** Re: Provincial Protection Agreement - Dealer Comments
**Date:** Friday, September 15, 2017 9:15:26 PM

---

I'm copying Mike, as he's arranging the meeting with John Lee, so whichever one of them is sending out the invitation can include you, Scott.

Regards,
Gadi

> On Sep 15, 2017, at 5:47 PM, Nelms, Scott (MOF) <Scott.Nelms@ontario.ca> wrote:
>
>
> Hi Gadi,
>
> Serge asked me to join the Monday meeting.
>
> Do you mind sharing the invite?
>
> Thanks,
> Scott
>
> Sent with BlackBerry Work
> (www.blackberry.com)
>
> From: Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca<mailto:Serge.Imbrogno@ontario.ca>>
> Date: Friday, Sep 15, 2017, 4:17 PM
> To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
> Subject: Fwd: Provincial Protection Agreement - Dealer Comments
>
>
>
> Sent from my iPad
>
> Begin forwarded message:
>
> From: "Mayman, Gadi (OFA)" <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>
> Date: September 15, 2017 at 2:04:32 PM EDT
> To: "Imbrogno, Serge (ENERGY)" <Serge.Imbrogno@ontario.ca<mailto:Serge.Imbrogno@ontario.ca>>
> Subject: FW: Provincial Protection Agreement - Dealer Comments
>
> Do you have time for a call?
>
> From: Milligan, Peter [mailto:PMilligan@osler.com]
> Sent: Friday, September 15, 2017 12:11 PM
> To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LEE John -TREASURY' <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>
> Cc: Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Malle Hanslep (MOF)

<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Ronald Kwan
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Ken Kandeepan
<Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Scott Nelms (ENERGY)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Mike Manning
<Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Gadi Mayman
<Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Mark Donaldson (MOF)
<Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Keley Katona (ENERGY)
<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; Tom McKinlay (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; Sebastiano, Rocco
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>; Fullerton, Rick
<RFullerton@osler.com<mailto:RFullerton@osler.com>>; Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>>;
Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Emes, Aaron
<aemes@torys.com<mailto:aemes@torys.com>>
> Subject: Provincial Protection Agreement - Dealer Comments
>
> All,
>
> We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.
>
>
> 1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include “such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.” Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.
>
>
>
> 2. The clause headed Specified Claims refers to “payment obligations” that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?
>
>
>
> 3. There was a request to expand the scope of the regulations covered to include “connected” regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.
>
>
>
> 4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.
>
>
>
> 5. The requirement that the change of law have a “material” adverse effect is not acceptable.
>
>
>
> 6. We do not want the phrase “in a final and non-appealable judgement” being included in the ultra vires provision. Investors will be looking for timely payment.
>
>
>
> 7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.
>

>
>
> 8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.
>
>
>
> 9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?
>
>
>
> 10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.
>
> We look forward to discussing.
>
> Peter
> [cid:image002.gif@01D32E1B.A4714E00]
>
> Peter Milligan
>
>
>
> 416.862.6634
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> pmilligan@osler.com<mailto:pmilligan@osler.com>
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image003.gif@01D32E1B.A4714E00][osler.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.osler.com_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=OdoCVLs6i-6reBTUJh9PAGSfpmSjeJXGKKb9SzvJOII&m=Hb8ZriqiFtlNPEwpTEQacS5ohWafCz0Axv9tYPdkJoA&s=z03PiPdjwVB7o-_pito-50GLn0X_wA4aMHyAR5V72mo&e=>
>
>
>
>
> _____
>
> **********

>
> This e-mail message is privileged, confidential and subject to
> copyright. Any unauthorized use or disclosure is prohibited.
>
> Le contenu du présent courriel est privilégié, confidentiel et
> soumis à des droits d'auteur. Il est interdit de l'utiliser ou
> de le divulguer sans autorisation.
>
> **********
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
> <image002.gif>
> <image003.gif>

**From:** Hanslep, Malle (MOF)
**To:** Mike Manning
**Cc:** Tobias P. Whitfield (MOF)
**Subject:** Re: Provincial Protection Agreement - Dealer Comments
**Date:** Monday, September 18, 2017 8:39:03 AM

---

Have we heard that the meeting is confirmed for today and it's location?

Also Blakes had some preliminary comments on these

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mike Manning
Sent: Friday, September 15, 2017 12:39
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

Not too surprised. Lots of issues to be ultimately dealt with. I'm hoping we can get an Agenda for the meeting to keep things on track.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:27 PM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Provincial Protection Agreement - Dealer Comments

It sounds like it will focus on issues other than the ones reflecting the process re: Obligor's approval.

From: Mike Manning [mailto:Mike.Manning@ofina.on.ca]
Sent: September 15, 2017 12:26 PM
To: Hanslep, Malle (MOF)
Subject: RE: Provincial Protection Agreement - Dealer Comments

I assume that is the same meeting. John Lee indicated he wanted their lawyers involved.
Mike

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, September 15, 2017 12:24 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Subject: FW: Provincial Protection Agreement - Dealer Comments

Hi. I notice they have mentioned a meeting for Monday, but is that the same meeting that you were mentioning to me just now or a different one?

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: September 15, 2017 12:11 PM
To: Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
Subject: Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate." Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the ultra vires provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations

by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter
[cid:image001.gif@01D32E1F.56395C60]

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com<mailto:pmilligan@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[cid:image002.gif@01D32E1F.56395C60][osler.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.osler.com_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=lFue48smBIJ-HYEaxAuO8Vf66sgXMA3BM66jfXTe-Bg&s=iq5Laua4v1urCmIWnQQM37H43D3tkqT6yqa-WKunIYs&e=>

---

**********

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

**********

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Ramchandani, Rima; Hill, Krista; "STEPHEN.ASHBOURNE@blakes.com"; "LEE John -TREASURY"; Feldman, Michael; RYFA Ken -TREASURY |
| **Cc:** | Gavin He; Hosick, Sarah (TBS); Cengarle, John (MOF); John Kim; Anna Strathy; Malle Hanslep (MOF); Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); Mike Manning; Gadi Mayman; Mark Donaldson (MOF); Keley Katona (ENERGY); Tom McKinlay (MAG); Thouin, Alena (ENERGY); "Milligan, Peter"; Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Ramchandani, Rima; Mansoori, Nina; Emes, Aaron |
| **Subject:** | Re: Provincial Protection Agreement |
| **Date:** | Thursday, September 14, 2017 8:51:30 PM |

---

Thanks, Rima.

We have started working on a draft agreement for discussion based on the term sheet.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456
From: Ramchandani, Rima
Sent: Thursday, September 14, 2017 6:41 PM
To: Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); 'Milligan, Peter'; Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Ramchandani, Rima; Mansoori, Nina; Emes, Aaron
Subject: RE: Provincial Protection Agreement

Thank you Toby. Attached are a few comments from Torys on your re-draft of the term sheet (clean and blacklined to your version – please note that the formatting is not always clear on the blackline but the clean version is fine). One minor note on our comments – you will see that we reinserted the words “or amends” in para (C) of the definition of a Protection Event. If this was deleted because you view this as already being covered in para (D), then we are OK with the deletion.

Please note that the attached only represents Torys comments and does not reflect input from the dealers/Osler. we have sent the Osler Team your re-draft of the term sheet for their review and consideration and, in the interests of time, are cc’ing them on this email so they can also see our comments.

Best,
Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario  M5K 1N2 Canada | www.torys.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=VMywtca9wV9beeMVCjNnmziqChkRugyDr2O5ekgNS-

E&s=d3herAtjTKzrtMKG_u1oZWYiHLfh9isHpn2CefFHppA&e= >
[Torys LLP]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=VMywtca9wV9beeMVCjNnmziqChkRugyDr2O5ekgNS-E&s=d3herAtjTKzrtMKG_u1oZWYiHLfh9isHpn2CefFHppA&e= >

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-14-17 5:00 PM
To: Hill, Krista <khill@torys.com>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: Provincial Protection Agreement

Please find attached a revised version of the Protection Agreement term sheet based on our conversation this morning.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

**From:** Anna Strathy
**To:** Ken Kandeepan
**Cc:** Ronald Kwan; Mike Manning
**Subject:** Re: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**Date:** Monday, November 13, 2017 10:20:13 PM

---

I see. So this will include Energy Policy staff but not OPG and their lawyers.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Nov 13, 2017, at 8:20 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anna
>
> Yes since there wasn't enough times Friday to go through all of the outstanding issues
>
> Thanks
>
> Ken k
>
> On Nov 13, 2017, at 7:14 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:
>
> > I'm happy to set it up. Was that the decision coming out of Friday's call?
> >
> > --
> > Anna Strathy
> > Special Policy Advisor to the CEO
> > Ontario Financing Authority
> > 416.325.8032
> >
> > On Nov 13, 2017, at 6:36 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
> >
> > > Hi Anna,
> > > Would you be setting up this meeting, and, as discussed last week, would Energy policy staff be attending so that we can get an Energy policy view on some of the key outstanding items with respect to the legal agreements?
> > > Ron
> > >
> > > **From:** Hanslep, Malle (MOF)
> > > [mailto:Malle.Hanslep@ontario.ca]

**Sent:** November-13-17 11:35 AM
**To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'stephen.ashbourne@blakes.com' <stephen.ashbourne@blakes.com>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.

Malle

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November-10-17 2:00 PM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep,

Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Ken Kandeepan
**To:** Anna Strathy
**Cc:** Ronald Kwan; Mike Manning
**Subject:** Re: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**Date:** Monday, November 13, 2017 8:20:27 PM

---

Hi Anna

Yes since there wasn't enough times Friday to go through all of the outstanding issues

Thanks

Ken k

On Nov 13, 2017, at 7:14 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> I'm happy to set it up. Was that the decision coming out of Friday's call?
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Nov 13, 2017, at 6:36 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Anna,
> > Would you be setting up this meeting, and, as discussed last week, would Energy policy staff be attending so that we can get an Energy policy view on some of the key outstanding items with respect to the legal agreements?
> > Ron
> >
> > **From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> > **Sent:** November-13-17 11:35 AM
> > **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid

<Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'stephen.ashbourne@blakes.com' <stephen.ashbourne@blakes.com>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>

**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,

We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.

Malle

---

**From:** Whitfield, Tobias P. (MOF)

**Sent:** November-10-17 2:00 PM

**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)

**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]

**Sent:** November 10, 2017 11:06 AM

**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Anna Strathy
**To:** Ronald Kwan
**Cc:** Ken Kandeepan; Mike Manning
**Subject:** Re: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**Date:** Monday, November 13, 2017 7:14:20 PM

---

I'm happy to set it up. Was that the decision coming out of Friday's call?

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Nov 13, 2017, at 6:36 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
> Would you be setting up this meeting, and, as discussed last week, would Energy policy staff be attending so that we can get an Energy policy view on some of the key outstanding items with respect to the legal agreements?
> Ron
>
> ---
>
> **From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> **Sent:** November-13-17 11:35 AM
> **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'stephen.ashbourne@blakes.com' <stephen.ashbourne@blakes.com>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
> **Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
> Hi all,
> We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning. We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting

tomorrow because they outline the points for our consideration. Thanks.
Malle

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November-10-17 2:00 PM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----
**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Ken Kandeepan
**To:** Anna Strathy
**Cc:** Ronald Kwan; Mike Manning
**Subject:** Re: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**Date:** Tuesday, November 14, 2017 6:47:36 AM

---

That is correct Anna

Ken k

On Nov 13, 2017, at 10:20 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> I see. So this will include Energy Policy staff but not OPG and their lawyers.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Nov 13, 2017, at 8:20 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:
>
> > Hi Anna
> >
> > Yes since there wasn't enough times Friday to go through all of the outstanding issues
> >
> > Thanks
> >
> > Ken k
> >
> > On Nov 13, 2017, at 7:14 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:
> >
> > > I'm happy to set it up. Was that the decision coming out of Friday's call?
> > >
> > > --
> > > Anna Strathy
> > > Special Policy Advisor to the CEO
> > > Ontario Financing Authority
> > > 416.325.8032
> > >
> > > On Nov 13, 2017, at 6:36 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

Hi Anna,
Would you be setting up this meeting, and, as discussed last week, would Energy policy staff be attending so that we can get an Energy policy view on some of the key outstanding items with respect to the legal agreements?
Ron

---

**From:** Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
**Sent:** November-13-17 11:35 AM
**To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'stephen.ashbourne@blakes.com' <stephen.ashbourne@blakes.com>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Hi all,
We have been reviewing the two agreements over the week-end and had call with Energy Legal and Blakes this morning.

We understand that a meeting will be scheduled for tomorrow with the full group to get further instructions on the draft with Blakes' comments that was distributed to the group on Friday for review. We will use the drafts from Friday for the purposes of our meeting tomorrow because they outline the points for our consideration. Thanks.
Malle

---

**From:** Whitfield, Tobias P. (MOF)
**Sent:** November-10-17 2:00 PM
**To:** Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** RE: Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel

Please find attached for discussion at our meeting this afternoon Blake's comments on the OPG/Dealer's comments. There are two versions. One shows a blackline against the OPG/Dealer's comments, and the other shows a blackline against what we circulated last week. Note that Stephen has not had a chance to review these in detail, so these are preliminary comments that are subject to further consideration and discussion.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----
**From:** Anna Strathy
[mailto:Anna.Strathy@ofina.on.ca]
**Sent:** November 10, 2017 11:06 AM
**To:** Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle

(MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
**Subject:** Provincial Protection and Process Agreements | OFA, OPCD, MOF, Energy, Legal Counsel
**When:** November 10, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

The purpose of this meeting is to discuss, at a high-level, OPG's edits to the Protection and Process Agreements (received Wednesday evening) and discuss next steps.
Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Hanslep, Malle (MOF) |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Ken Kandeepan; Ronald Kwan; Mike Manning; Keley Katona (ENERGY) |
| **Cc:** | Gadi Mayman; Anthony Reiss (MGS); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY) |
| **Subject:** | Re: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC |
| **Date:** | Wednesday, September 20, 2017 8:11:38 AM |

---

Yes I think that our previous discussion was that if there were any material changes we would go back to TB and certain items were left in square brackets with a note to show that they are subject to further negotiation.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Anna Strathy
Sent: Wednesday, September 20, 2017 08:00
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Manning, Mike (OFA); Katona, Keley (MOF)
Cc: Mayman, Gadi (OFA); Reiss, Anthony (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY)
Subject: RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi Malle,

Thank you for your thorough and thoughtful review.

Just getting back to you now on your two comments:

· The TB analyst has asked whether to minute the attachment or to include key parameters of the term sheet in the minute – I'm inclined to stick with referring to the term sheet in the minute. The language in the term sheet was "litigated" enough that I fear misrepresenting any parameters when they are summarized for the purpose of a minute. I agree with you that recommending TB approve the Ministers entering into the agreement, based on the current term sheet, would remove the possibility of subsequent revisions to the term sheet.

· Attaching a draft of the OIC to refer to in the minute – I don't think this is required, nor is it typically done, but we could certainly provide the draft to James for his reference.

Anna

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, September 19, 2017 2:00 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>
Subject: RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Here are my comments on the analyst's note.

p. 1 Recommendations
- second recommendation, remove "to" after "Ministry of Energy"
- third recommendation, should this refer to the draft OIC that is attached. Don't know whether the TB submission itself references a draft OIC being attached?

p. 2 "What would trigger the protection agreement?"
- second bullet re: court decision, change wording from "invalid or unenforceable" to "invalid or ultra vires" to

match most recent version of term sheet
- third bullet – the third event has now been inserted into the term sheet as “there is a change in the organization or structure of the IESO or Ontario’s electricity market undertaken at the initiative of the Province or an entity controlled by the Province that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interst so that it can pay its funding obligations.

p. 4 See the comments in the proposed first minute asking whether there is a desire to minute the attachment or to include key parameters in minute only given the request for a “subject to revisions provision”. I am not sure how we wish to answer this question. Putting in only key parameters would broaden the 2 Ministers’ discretion to agree to revisions to the term sheet. Possibly if we were to do this, are the essential parameters really the “Protection Events”, and “Obligation re: pay specified claims? Comments on this?

p. 4 Regarding second minute – should it reference a draft form of OIC attached?

Regarding the questions posed by the analyst, here is a start on some of those.

1. Third trigger is in now.

2. Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt [need description of interest rate swaps and what might be done here – fix floating rate debt – anything else?]
3. The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period….
4. The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
Sent: September 19, 2017 10:11 AM
To: Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); Manning, Mike (OFA); Katona, Keley (MOF)
Cc: Mayman, Gadi (OFA); Reiss, Anthony (MOF)
Subject: Fwd: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Good morning,

Please find attached, the draft TBS Assessment note on the Provincial Protection Agreement. Please review and provide comments to me by 3:00pm this afternoon and I will consolidate comments for Gadi's review.

With respect to James' questions, I'll follow up separately and I expect some will be answered in the updated draft of the submission (with final term sheet).

Thank you, Anna

Sent from my iPhone

Begin forwarded message:
From: "Strang, James (TBS)" <James.Strang@ontario.ca<mailto:James.Strang@ontario.ca>>
To: "Anthony Reiss (MGS)" <Anthony.Reiss@ontario.ca<mailto:Anthony.Reiss@ontario.ca>>, "Pratima Gounden (ENERGY)" <Pratima.Gounden@ontario.ca<mailto:Pratima.Gounden@ontario.ca>>
Cc: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>, "Hosick, Sarah (TBS)"

<Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>, "Anna Strathy"
<Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>, "Ronald Kwan"
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>, "Afshin Malekzadeh (MOHLTC)"
<Afshin.Malekzadeh@ontario.ca<mailto:Afshin.Malekzadeh@ontario.ca>>, "Chris Skubel (MGS)"
<Chris.Skubel@ontario.ca<mailto:Chris.Skubel@ontario.ca>>, "Indira Komal (MCSCS)"
<Indira.Komal@ontario.ca<mailto:Indira.Komal@ontario.ca>>, "Lenna Wichenko (MCSCS)"
<Lenna.Wichenko@ontario.ca<mailto:Lenna.Wichenko@ontario.ca>>, "Paul Kaufman (MOHLTC)"
<Paul.Kaufman@ontario.ca<mailto:Paul.Kaufman@ontario.ca>>, "Nick Smook (MOF)"
<Nick.Smook@ontario.ca<mailto:Nick.Smook@ontario.ca>>
Subject: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC
Hi,

Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

· Draft sub takes about a Change of Law Protection Agreement and identifies three triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify.

o Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope?

· What are derivative agreements? Payments under derivative agreements?

· Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market?

· Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA?

Thanks in advance,

James Strang
416-327-2071

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately

by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Ronald Kwan
**To:** Anna Strathy
**Cc:** Gadi Mayman; Mike Manning; Ken Kandeepan
**Subject:** Re: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC
**Date:** Wednesday, September 20, 2017 11:09:02 AM
**Attachments:** 4 RAN MOF ENERGY - Change of Law Protecition Agreement v4 (MOF & ENE comments)_Markup.doc

---

Hi Anna,

Sorry for the timing, but here are some suggestions to an earlier version Ken sent on to me this morning.

Ron

---

**From:** Anna Strathy
**Sent:** September 20, 2017 11:00 AM
**To:** James Strang (MOF)
**Cc:** Veinot, Cindy (TBS); Hosick, Sarah (TBS); Ronald Kwan; Afshin Malekzadeh (MOHLTC); Chris Skubel (MGS); Indira Komal (MCSCS); Lenna Wichenko (MCSCS); Paul Kaufman (MOHLTC); Nick Smook (MOF); Anthony Reiss (MGS); Pratima Gounden (ENERGY); Ken Kandeepan; Gadi Mayman; Mike Manning
**Subject:** RE: Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi James,

Please find attached, consolidated comments and edits from the OFA, Energy, and MOF Legal, as well as responses to your questions, below.

Please don't hesitate to contact me should you have any questions.

Thanks, Anna

---

**From:** Strang, James (TBS) [mailto:James.Strang@ontario.ca]
**Sent:** Tuesday, September 19, 2017 9:36 AM
**To:** Anthony Reiss (MGS) ; Pratima Gounden (ENERGY)
**Cc:** Veinot, Cindy (TBS) ; Hosick, Sarah (TBS) ; Anna Strathy ; Ronald Kwan ; Afshin Malekzadeh (MOHLTC) ; Chris Skubel (MGS) ; Indira Komal (MCSCS) ; Lenna Wichenko (MCSCS) ; Paul Kaufman (MOHLTC) ; Nick Smook (MOF)
**Subject:** Provincial Support Agreement (Fair Hydro Plan) - Sept 26 TB/MBC

Hi,

Attached is a draft TB/MBC note based on draft submission version 8 (also attached). I've heard there is another updated version on the way. Please provide an update of timing for Ministers signing from both Ministries.

Below are questions, hopefully responses can be provided in advance of Chair's pre-brief on Wednesday afternoon (so responses by Wednesday morning to include in revised note, if needed).

- Draft sub takes about a Change of Law Protection Agreement and identifies three

triggers. The first two make sense talking about legislative/regulation changes and judicial changes, the third dealing changes within IESO adversely impacting the Financing Entity does seem to be related to change of law. Please clarify. The working title of the agreement is the Provincial Protection Agreement; however it is still subject to change.

- Regarding the third trigger, is this in or out? If in, is there any consideration being given to the Province to narrow the very broad scope? The third trigger is in and it's been narrowed to ensure only a change that adversely impacts the ability of the Financing Entity to collect payments would trigger the protection agreement.

- What are derivative agreements? Payments under derivative agreements? Derivatives agreements are financial contracts entered into by parties to hedge financial risk associated with borrowing for example. In this particular circumstances, the Financing Entity might enter into interest rate swap agreements to hedge the interest rate payable on its issued debt.
- Does the Province have any consideration/protection regarding the subsequent form of obligations, securities/derivatives that can be brought/offered to the market? The Minister of Finance and Minister of Energy will negotiate terms and conditions as part of the proposed protection agreement that would provide a process for determining which future obligations, securities/derivatives would have the benefit of the protection agreement. The process and framework is currently under development but may include approving standard terms and conditions of debt issuances in advance, setting a maximum amount of debt that may be issued within a period.
- Following this submission, will there be the typical submissions seeking s28 FAA approvals for the guarantee or indemnification provided? If not, how does the requested minute cover off s28 FAA? The Minister of Finance will be asked to approve for the purpose of FAA s. 28 the 2 Ministers seeking the OIC in the form attached. The Minister of Finance will also be requested to approve under FAA s. 28 the final form of protection agreement to be entered into by the Minister of Energy and the Ministry of Finance as authorized by the OIC.

Thanks in advance,

James Strang
416-327-2071

| | TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE | |
|---|---|---|
| **Ministry:** | Energy & Finance | |
| **Meeting Date:** | September 26, 2017 | |
| **Agenda Class:** | Discussion (In-Camera) | |
| **Last reviewed by:** ENERGY<br>TB/MBC May 9, 2017 | **Tracking to:** Fast Track<br>Cabinet (September 27, 2017) | |

**Commented [KR(1]:** Why is this included? Usually Cabinet or its committees are put here.

| **SUBMISSION TITLE:** | ~~Change of Law~~Provincial Protection and Assurances Agreement (Supports Ontario's Fair Hydro Plan implementation) |
|---|---|

## I. DECISION BEFORE THE BOARD

Approve the Ministries plan for implementing provisions within the ~~O~~*ntario Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. under the FHPA.

## II. RECOMMENDATIONS

| | |
|---|---|
| Approve the plan for implementing provisions of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* (FHPA) to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc (OPG).<br><br>– Under certain circumstances, the Province would pay, when due, amounts in respect of the obligations of the Financing Entity (~~E~~established by OPG) | *Approve* |
| Authorize that the Minister of Finance and Minister of Energy ~~to~~ provide a protection and assurance agreement, to be authorized by Order in Council under the ~~Ontario~~ *Fair Hydro Plan Act, 2017*(FHPA).<br><br>– In respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out in the Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two Ministers acting together may determine | *Authorize* |
| Recommend that Cabinet approve an Order in Council (OIC), in accordance with section 5 of the ~~Ontario~~ *Fair Hydro Plan Act, 2017* (FHPA) that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,<br><br>– ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and<br>– ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity. | *Recommend* |

**Commented [ESP2]:** This item is not up for approval per the TB Sub.

## III. FINANCIAL SUMMARY

| **$ Millions** | **2017-18** | **2018-19** | **2019-20** |
|---|---|---|---|
| Initiative cost requested | 0.0 | 0.0 | 0.0 |

| | | | |
|---|---|---|---|
| Initiative cost recommended | 0.0 | 0.0 | 0.0 |
| Recommended program base | 0.0 | 0.0 | 0.0 |
| Offset Recommended | 0.0 | 0.0 | 0.0 |
| Total Fiscal Impact | 0.0 | 0.0 | 0.0 |

## IV. KEY COMMENTS AND CONSIDERATIONS

Under the ~~Ontario~~ *Fair Hydro Plan Act, 2017*, (~~O~~FHPA), which enables Global Adjustments (GA) Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap during the deferral period, resulting from the reduction in GA amounts collected. The legislation enables IESO to record the under-collection amount of GA in a variance account, ultimately recover this amount in the future, and ~~deems~~provides for the establishment of this under-collected amount to be a "Regulatory Asset".

The OFHPA provides for ~~the~~ IESO to sell all or a portion of the Regulatory Asset (i.e., to sell the right to recover those deferred amounts from specified consumers in the future). Under the ~~O~~FHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG, as the Financial Services Manager under the ~~O~~FHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly the Province) from the capital markets.

OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a ~~change of law~~ protection and assurance agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity.

- Providing this~~, in a May 2017 TB/MBC item reviewing proposed FHPAOntario Fair Hydro Plan legislation,~~ through Provinciale assurance and guarantee provisions~~,~~ was recommended in a May 2017 TB/MBC item reviewing the proposed FHPA.

*What would trigger the protection agreement?*

Ontario Financing Authority (OFA), the Ministry of Finance, Ministry of Energy and external advisors – consistent with OPG advice – recommend limiting activation of the protection agreement to the following circumstances (Appendix C provides the non-binding term sheet):

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the ~~O~~FHPA or new legislation that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or ~~*unenforceable*~~*ultra vires*; and
- A change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province that adversely affects the ability of an OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations~~Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt~~

**Commented [KR(3]:** Why isn't Energy listed?

**Formatted:** Font: Italic

**Formatted:** Font color: Black

**Commented [KR(4]:** Should it state somewhere that materiality thresholds/definitions are to be established wrt "adversely"?

**Formatted:** Font color: Black

**Formatted:** Font color: Black

~~obligations~~.

~~*Note: this third protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.]*~~

*….the third bullet isn't change of Law related?…*

**Commented [AS5]:** May or may not be the result of a change of law.

*Financial:*

If the protection agreement is provided, the Province takes on a contingent liability. The amount of the liability would increase over the duration of Ontario's Fair Hydro Plan (OFHP) ~~the OFHP~~ and peak at approximately $20B ~~an estimated $24B to $26B~~ of debt (final cost forecasts TBC), including principal and accumulated interest.

**Commented [HS(6]:** This is inconsistent with the Aug 31 Submission

Thought the estimated debt # was lower?

- In the event the protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

*Financial (Risk) – In the event the protection agreement is triggered:*

The Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as they come due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers. This would likely have implications for the Province's fiscal plan and appropriation requirements.

- The Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time.
- The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it will be required to make under the protection agreement. The worst case scenario would be the Province assuming the debt at its peak at which point interest on debt (IOD) expense could increase by an estimated between $0.7~~8~~B and $1.~~3~~0B per annum ~~(final cost forecasts TBC)~~, depending on the interest rate at which the Financing Entity will be able to borrow at and the total amount of borrowing (final cost forecasts TBC).
- In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

The protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged. In addition, the Province would ~~also~~ have the option to directly replace the OPG Financing Entity with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The Ministries indicate that if the protection agreement is triggered, and the Province becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (~~Interest On Debt (~~IOD~~)~~ expense) will depend on whether or not some portions of the OFHPA continue in some form, or not.

- For example if the ~~If the~~ payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not

to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used.
- Debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

| | | | |
|---|---|---|---|
| **Name of analyst:** | James Strang | **Phone number:** | 416-325-2071 |
| **Date:** | September 18, 2017 | **Log number:** | |
| **Branch / Division:** | GGPR / PEMD / Treasury Board Secretariat | | |

## APPENDIX A: PROPOSED MINUTE (UNDER DEVELOPMENT)

Approve the Ministries' plan for implementing provisions of the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017* to provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by entities established by Ontario Power Generation Inc. In particular, that under certain circumstances the Province would pay when due amounts in respect of the obligations of the Financing Entity (Established by OPG).

In this regard,

i) Authorize that the Minister of Finance and Minister of Energy provide a protection agreement, to be authorized by Order in Council under the ~~*Ontario*~~ *Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities substantially reflecting the terms set out non-binding term sheet – Provincial Protection and Assurances Indicative Term Sheet including in the TB/MBC Submission, (… minuting an attachment?…or include key parameters in minute only, given request for the subject to revisions provision…) and subject to such revisions that the two ministers acting together may determine;

ii) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the FHPA~~Ontario Fair Hydro Act~~, that authorizes the Minister of Finance and the Minister of Energy, acting together on behalf of the Province,

   a) ~~to~~ To agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; and
   b) ~~to~~ To determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.

**Commented [AS7]:** Recommend referring to the attachment rather than key parameters (limit potential revisions to the term sheet)

## APPENDIX B: FINANCIAL TABLES

| FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE | | | | | TABLE B1 |
|---|---|---|---|---|---|
| | | *Fiscal Plan Basis* | | | *Appropriations Basis* |
| **$ Millions** | | **2017-18** | **2018-19** | **2019-20** | **2017-18** |
| Initiative cost recommended | | | | | |
| *Expense changes:* | | | | | |
| | Oper | | | | |
| | | | | | |
| *Expense Offset:* | | | | | |
| | Oper | | | | |
| | Oper | | | | |
| | | | | | |
| **Total Fiscal Impact** | | 0.0000 | 0.0000 | 0.0000 | **0.0000** |

## APPENDIX C: EXCERPT FROM ~~ONTARIO~~ *FAIR HYDRO PLAN ACT, 2017*

Protection and assurances

Prohibition

**5** (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

## APPENDIX D: NON-BINDING TERM SHEET

Commented [AS8]: Update to Sep 18 version

### APPENDIX

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council |

| | |
|---|---|
| | makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

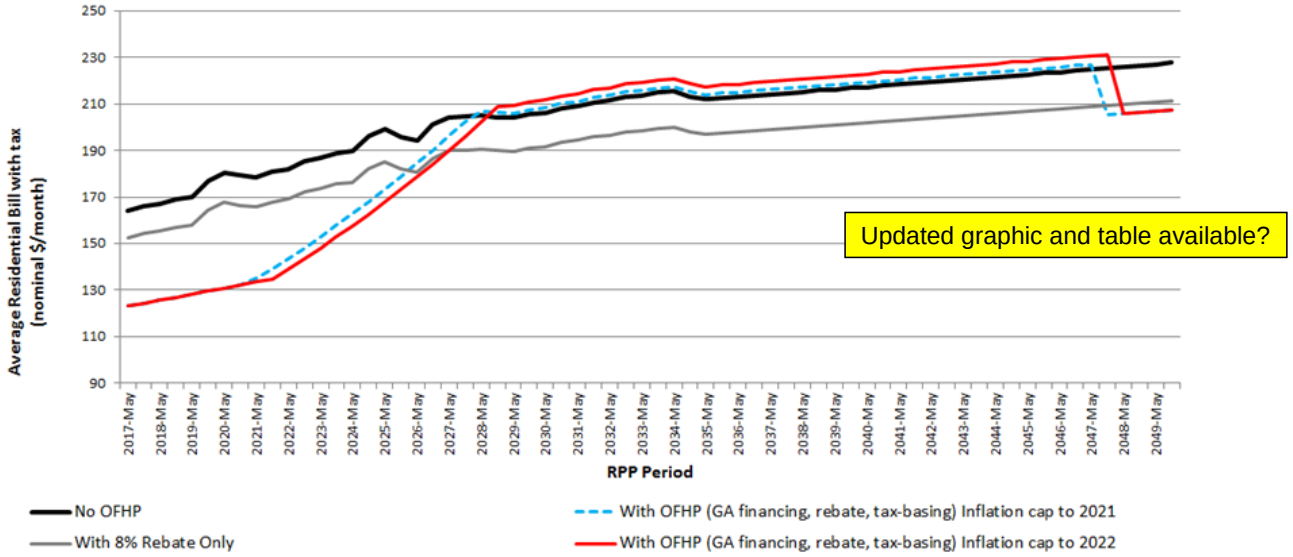
| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

## APPENDIX E: PROFILE GLOBAL ADJUSTMENT SMOOTHING FOR RPP – ELIGIBLE ONLY – MAY 2017 TB/MBC SUBMISSION

Commented [HS(9]: Recommend that we don't include this reference.

The following graphic and table shows the multi-year profile of the planned approach to GA Smoothing that was included with the May 2017 TB/MBC Submission. The table below supports the Ministries assessment that the potential contingent liability under the protection agreement over the duration of the OFHP would peak at an estimated $24M to $26B (subject to final cost forecasts TBC), including principal and interest.

Commented [ESP10]: These numbers and the table below are pending finalization of costs forecasts – this work is still ongoing with OPG.




Updated graphic and table available?

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 | 2037 | 2038 | 2039 | 2040 | 2041 | 2042 | 2043 | 2044 | 2045 | 2046 | 2047 | 2048 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Average monthly bill with OFHP ($/month) | 124 | 126 | 129 | 131 | 137 | 146 | 155 | 165 | 176 | 187 | 199 | 207 | 207 | 209 | 212 | 214 | 216 | 216 | 214 | 215 | 216 | 217 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 216 | 206 |
| Year-over-year change (%) | n/a | 2.01 | 2.01 | 2.01 | 4.25 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 6.44 | 3.61 | 0.08 | 1.20 | 1.29 | 1.14 | 0.93 | -0.04 | -0.88 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 | -4.37 | -4.61 |
| Impact of GA financing and tax-basing ($/month) | -29.9 | -30.0 | -35.0 | -34.4 | -28.8 | -24.0 | -17.8 | -14.2 | -3.3 | 3.4 | 12.2 | 16.4 | 16.5 | 16.7 | 16.9 | 17.1 | 17.2 | 17.1 | 17.0 | 17.1 | 17.2 | 17.3 | 17.4 | 17.5 | 17.6 | 17.6 | 17.7 | 17.8 | 17.9 | 18.0 | -3.9 | -4.0 |
| Total accumulated debt ($B) | 2.5 | 5.2 | 8.2 | 11.6 | 14.7 | 17.5 | 19.9 | 22.0 | 23.5 | 24.1 | 24.2 | 23.7 | 23.1 | 22.5 | 21.8 | 21.0 | 20.1 | 19.2 | 18.3 | 17.2 | 16.1 | 14.9 | 13.7 | 12.3 | 10.9 | 9.3 | 7.7 | 5.9 | 4.1 | 2.1 | 0.0 | 0.0 |
| Total change in accumulated debt ($B) | 2.5 | 2.6 | 3.0 | 3.5 | 3.1 | 2.8 | 2.4 | 2.0 | 1.6 | 0.6 | 0.1 | -0.5 | -0.6 | -0.6 | -0.7 | -0.8 | -0.8 | -0.9 | -1.0 | -1.0 | -1.1 | -1.2 | -1.3 | -1.4 | -1.4 | -1.5 | -1.6 | -1.7 | -1.9 | -2.0 | -2.1 | 0.0 |

**Notes:** Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

## APPENDIX F: OVERVIEW OF RISKS

Prepared by TBS staff, the following chart, as part of the May 2017 OFHP implementation update focused on the proposed legislation. It provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

The current submission, ~~Change of Law~~ Provincial Protection Agreement, is reflected under the risk "Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding" (page 16) as part of risk mitigating strategy.

*Global Adjustment Partial Refinancing:*

**Objective:** Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements.<br>• Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG.<br>• Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |
| A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Medium<br>**Risk Impact:** High<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and close monitoring of costs and changes in variables built into model.<br>• Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Moderate<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases.<br>• Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing. | Risk can be avoided by:<br>• Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure.<br><br>Risk can be mitigated by:<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.<br>• Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Critical<br>**Time Scale:** 6 to 12 months<br><br>**Rationale:**<br>• The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit.<br>• The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met.<br>• If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising.<br>• Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity.<br>• The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited.<br>• An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required. | Risk can be mitigated by:<br>• Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG. |
| Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province. | **Risk Likelihood:** Likely<br>**Risk Impact:** Major<br>**Time Scale:** More than 36 months<br><br>**Rationale**<br>• The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model).<br>• The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models.<br>• Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases)<br>• Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** Long-Term (More than 36 months)<br><br>**Rationale**<br>• If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments.<br>• Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized.<br>• Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI.<br>• If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required. | Risk can be avoided by:<br>• Imposition of a valid tax.<br>• Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase).<br>• Use of public funds to ease pressure.<br><br>Risk can be mitigated by:<br>• Improve forecasting model and ongoing monitoring of costs and changes in variables built into model.<br>• Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure.<br>• Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court. |

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Time Scale:** 12 to 24 months<br><br>**Rationale**<br>• The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee.<br>• As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing.<br>• There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing.<br>• If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.<br>• Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases.<br>• Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term. As well as if a protection agreement is called upon:<br>o OPG, has advised that the Government of Ontario provide a change of law protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would pay the funding obligations of the Financing Entity. | Risk can be mitigated by:<br>• Providing a "provincial guarantee" for the cost of borrowing.<br>• Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption.<br>• Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. Limiting triggers of a protection agreement to legislative (regulatory) changes and/or judicial decisions etc.<br>• Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. |

*Electricity social programs (Enhancing Electricity Support & Conservation Programs):*

**Objective:** Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

| Risk | Level of Risk | Risk Response |
|---|---|---|
| Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province. | **Risk Likelihood:** Possible<br>**Risk Impact:** Major<br>**Timescale:** 12 to 24 months<br><br>**Rationale:**<br>• The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate.<br>• Fiscal projection is highly dependent on factors which can fluctuate from year to year, including:<br>o electricity usage;<br>o distributions costs; and<br>o consumer consumption patterns that may change due to extreme weather or other factors.<br>• Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs.<br>o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program. | Risk can be mitigated by:<br>• Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models. |

| | |
|---|---|
| **From:** | John Kim |
| **To:** | Ken Kandeepan |
| **Cc:** | Ronald Kwan; Gadi Mayman; Carlos Yep; James Devine; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Scott Nelms (ENERGY); Mike Manning |
| **Subject:** | Re: Provincial Support Agreement update |
| **Date:** | Wednesday, September 06, 2017 6:47:52 PM |

Hi Ken,

I think Gadi's email addressed this too but understanding clearly was that we would share drafts with OPG.

John

Sent from my iPhone

On Sep 6, 2017, at 5:09 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Thanks John, just to be clear what we determined at the meeting yesterday was to ensure that Energy was in fact comfortable with the OFA sharing the latest version of OPG's term sheet for the guarantee **including the comments and edits from Blake's**. These, while not substantially amending the term sheet does make it narrower.
>
> Let us know
>
> Thanks
>
> Ken k
>
> ---
>
> **From:** John Kim
> **Sent:** Wednesday, September 06, 2017 5:02 PM
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
> **Subject:** FW: Provincial Support Agreement update
>
> Hi Mike, Ken,
>
> I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which

MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

---

**From:** John Kim
**Sent:** Tuesday, September 05, 2017 6:08 PM
**To:** Steen Hume (CAB) <Steen.Hume@ontario.ca>
**Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Cheryl Carson (ENERGY) <Cheryl.Carson@ontario.ca>
**Subject:** FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

---

**From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
**Sent:** Thursday, August 31, 2017 2:18 PM
**To:** John Kim <John.Kim@ofina.on.ca>

**Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
**Subject:** Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | John Kim; Ken Kandeepan |
| **Cc:** | Ronald Kwan; Gadi Mayman; Carlos Yep; James Devine; Malle Hanslep (MOF); Scott Nelms (ENERGY); Mike Manning |
| **Subject:** | Re: Provincial Support Agreement update |
| **Date:** | Thursday, September 07, 2017 8:01:30 AM |

---

I agree that it makes sense to share it right away.

I just want to make sure that we are sharing the right version, which should be in the version that John shared yesterday afternoon and with "shared clean" in the file name.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456
From: John Kim
Sent: Wednesday, September 6, 2017 6:47 PM
To: Kandeepan, Ken (OFA)
Cc: Kwan, Ronald (OFA); Mayman, Gadi (OFA); Yep, Carlos (OFA); Devine, James (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Nelms, Scott (MOF); Manning, Mike (OFA)
Subject: Re: Provincial Support Agreement update

Hi Ken,

I think Gadi's email addressed this too but understanding clearly was that we would share drafts with OPG.

John

Sent from my iPhone

On Sep 6, 2017, at 5:09 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>> wrote:

Thanks John, just to be clear what we determined at the meeting yesterday was to ensure that Energy was in fact comfortable with the OFA sharing the latest version of OPG's term sheet for the guarantee including the comments and edits from Blake's. These, while not substantially amending the term sheet does make it narrower.

Let us know

Thanks

Ken k

From: John Kim
Sent: Wednesday, September 06, 2017 5:02 PM
To: Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Gadi Mayman

<Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Carlos Yep
<Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; James Devine
<James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Malle Hanslep (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Scott Nelms (ENERGY)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: FW: Provincial Support Agreement update

Hi Mike, Ken,

I had a call with Adrian Nalasco who is acting for Steen. He has indicated that along with Steen, Energy's Deputy is away so it is difficult for him to provide a formal go-ahead to us. I explained to him the time sensitivity and that we would have a discussion with OPG on an informal basis to get their feedback on the latest draft which MOF Legal and Energy Legal have drafted. I gave him a bit of a background that OPG has had back and forth with us on previous versions of the draft.

With these caveats, Adrian is comfortable with various members of the OFA having discussions with OPG counterparts on the latest draft support agreement.

Thanks,

John

From: John Kim
Sent: Tuesday, September 05, 2017 6:08 PM
To: Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Malle Hanslep (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Scott Nelms (ENERGY)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Carolyn Calwell (MCSS)
<Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Gadi Mayman
<Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Cheryl Carson (ENERGY)
<Cheryl.Carson@ontario.ca<mailto:Cheryl.Carson@ontario.ca>>
Subject: FW: Provincial Support Agreement update

Hi Steen,

I'm sending the attached revised draft, non-binding term sheet on behalf of various parts of the OFA that are working on the Provincial guarantee / support agreement to support the OPG financing entity.

As you may have been informed, the attached draft term sheet was drafted jointly by MOF Legal, Energy Legal and Blakes' and is somewhat narrower in scope of the guarantee/support than the version that was provided by OPG in mid-August.

To discuss, we would like to host a meeting tomorrow, if possible, including your team and Energy Legal, MOF Legal and GBED. Also, Capital Markets folks here at the OFA are looking to share the draft term sheet with their counterparts at OPG. Pls. advise if you would have any issue with the sharing of the draft term sheet.

If you could advise of your availability, I would be happy to coordinate on behalf of everyone here at the OFA.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, August 31, 2017 2:18 PM
To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>

Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Elcombe, James (MOF) <James.Elcombe@ontario.ca<mailto:James.Elcombe@ontario.ca>>
Subject: Provincial Support Agreement update

John,

Together with our outside counsel at Blake's and Energy Legal we have revised the term sheet further.

The attached note, prepared by Energy Legal is a good summary of the issues and where things stand.

I think the next step is to have you and Ron discuss this draft, and prepare to meet with staff at the OFA and Energy once Gadi returns next week and has been briefed on the progress.

Please share as you think makes sense at the OFA, and let me know if you want to discuss further.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

| | |
|---|---|
| **From:** | Ronald Kwan |
| **To:** | Anna Strathy |
| **Cc:** | Gadi Mayman; Ken Kandeepan; Mike Manning |
| **Subject:** | Re: QA AG Report OFHP Technical Briefing |
| **Date:** | Sunday, October 15, 2017 10:04:03 AM |

---

Hi Anna,

On a quick skim on the iPhone, they did not correct the name of the OFA ("Financing", not "Financial").

Ron

On Oct 15, 2017, at 8:32 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, final Q&As and technical deck. I haven't done a thorough comparison, but it looks as though our edits have been accepted.
>
> Gadi, these will be the materials used at tomorrow's 8am meeting.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
> > **Date:** October 14, 2017 at 3:15:22 PM EDT
> > **To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
> > **Subject: QA AG Report OFHP Technical Briefing**
> >
> > Hi Folks,
> >
> > Attached are the QAs for the AG OFHP Report. This version incorporates input from OFA. Attached is also the TBS QAs, which we've kept as a stand-alone product since it's very technical and specific to TBS (also attached).

These will be used at Monday morning's meeting along with the technical deck which is still being finalized.

Thanks,
Martin

**From:** Gadi Mayman
**To:** Ken Kandeepan
**Cc:** Ronald Kwan; Anna Strathy; Mike Manning
**Subject:** Re: QA AG Report OFHP Technical Briefing
**Date:** Sunday, October 15, 2017 11:01:44 AM

---

The point is well made, but we'd been asked to stay away from OPG loans from OEFC, and I'm not keen on bringing another agency, IO, into this discuss, so I think that it would suit decision-makers best if, when we get to the example part of the explanation, we went with Hydro One having borrowed in its own name at its credit spread for more than 15 years.

On Oct 15, 2017, at 10:45 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Agreed with Ron's comment ( it's the penultimate question). My preference would be also to emphasize the fact that placing the responsibility for the financing costs on the base is a long and well established policy of the Government and I would make this point in the response to the first question.
> The fourth para in the response could be extended as follows: " Having the beneficiaries of a particular initiative pay the costs of financing is in accordance with a long and well established government policy. For example, Infrastructure Ontario's loans to the municipal sector are made at rates that approximate the external borrowing costs of a particular municipality. Likewise, loans to OPG from the Province or its agencies use a market proxy to determine applicable interest rates, despite the lower borrowing costs of the Province."
> If Gadi agrees he can raise the issue tomorrow at the briefing.
> Thanks
> Ken k
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Sunday, October 15, 2017 10:04 AM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** Re: QA AG Report OFHP Technical Briefing
> Hi Anna,
> On a quick skim on the iPhone, they did not correct the name of the OFA ("Financing", not "Financial").
> Ron
>
> On Oct 15, 2017, at 8:32 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:
>
> > FYI attached, final Q&As and technical deck. I haven't done a thorough comparison, but it looks as though our edits have been accepted.
> > Gadi, these will be the materials used at tomorrow's 8am meeting.
> >
> > --
> > Anna Strathy
> > Special Policy Advisor to the CEO
> > Ontario Financing Authority

416.325.8032

Begin forwarded message:

**From:** "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>
**Date:** October 14, 2017 at 3:15:22 PM EDT
**To:** "Allison Ue (MCSS)" <Allison.Ue@ontario.ca>, "David McLean (MOF)" <David.McLean@ontario.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Hilary Cox (ENE)" <Hilary.Cox@ontario.ca>
**Subject: QA AG Report OFHP Technical Briefing**

Hi Folks,

Attached are the QAs for the AG OFHP Report. This version incorporates input from OFA. Attached is also the TBS QAs, which we've kept as a stand-alone product since it's very technical and specific to TBS (also attached).

These will be used at Monday morning's meeting along with the technical deck which is still being finalized.

Thanks,
Martin

**From:** Ronald Kwan
**To:** Ken Kandeepan
**Cc:** Anna Strathy; Mike Manning
**Subject:** Re: Regroup on Provincial Protection Agreement
**Date:** Tuesday, September 19, 2017 8:53:49 AM

---

Hi,

I have internal meetings that I could move, so I'm available.

Ron

On Sep 19, 2017, at 8:51 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> I have a tele conference from 9.30 to 10.30, however, FTD managers are participating so if that is the ideal time for everyone else I can make myself available. I am free after 10.30 as well.
> Thanks
> Ken k
>
> ---
>
> **From:** Anna Strathy
> **Sent:** Tuesday, September 19, 2017 8:48 AM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Regroup on Provincial Protection Agreement
> I thought we may want to regroup with Gadi this morning on yesterday's meeting with OPG and Tory's. Could you please advise of your availability between 9:30am and 12pm?
> Anna
> **Anna Strathy**
> Special Policy Advisor to CEO
> Ontario Financing Authority
> 1 Dundas Street West, 14th Floor
> 416.325.8032 | anna.strathy@ofina.on.ca

**From:** ASHBOURNE, STEPHEN
**To:** Ken Kandeepan
**Cc:** Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Mike Manning; Carlos Yep; Ronald Kwan; Anna Strathy; Alena Thouin (ENERGY); Tom McKinlay (MAG)
**Subject:** Re: Response to OPG
**Date:** Monday, October 16, 2017 6:55:06 AM

---

Hi Ken.

The issue we face is that investors will expect to know with certainty that the PA applies, without looking into the satisfaction of detailed and potentially subjective conditions (e.g., materiality). That is why we have provided for simple and objective pre-conditions (i.e., delivery of a prescribed form of closing certificate).

If we incorporate specific conditions into the FE's constating documents, then non-compliance could vitiate the PA obligation - meaning that investors/underwriters would need to satisfy themselves that all of the constating conditions have in fact been met. That is the opposite of simplicity and introduces a possible. 'gotcha' scenario.

I think that the Province needs to land firmly on the extent to which conditions of a closing are needed for its benefit and whether it will be willing to accept the consequences if the conditions do not mitigate all of the gaps (e.g., OPG errors or close calls).

While I think we have discussed the possible gaps a few times, it is not too late to impose more rigour, likely in the form of the Province being actively involved in processing individual incurrence and due diligence at the time of a closing.

I suggest that we have a discussion this morning to make sure we all have a common understanding of the proposed incurrence adherence process and the possible gaps and risks to the Province that will remain.

I am generally around this morning so please call when it's convenient for you.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Oct 15, 2017, at 11:27 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>> wrote:

Thanks Stephen for the clarification.

My objective in putting forward this suggestion was to eliminate any possibility of the FE issuing debt that may contravene the Protection Agreement (PA). As it stands, theoretically the FE can issue debt that falls outside the PA though it will not be guaranteed by the Province. The problem conceivably arises with regard to any debt issues that are very close to the line drawn by the PA and the consequent need for due diligence on the part of the Province on an issue by issue basis, all of which can be eliminated or at least alleviated by the incorporation of negative covenants.

Pity that it is not possible.

Thanks

Ken k

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Friday, October 13, 2017 6:55 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
Subject: RE: Response to OPG

Ken, it is not advisable to incorporate negative covenants in the FE's incorporation documents. That approach would raise ultra vires issues, which could cast doubt on the efficacy of particular debt issues. I was anticipating negative covenants in the Change of Law Protection Agreement. Happy to discuss. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

<image001.gif>

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com|blakes.com|<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blakes.com&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=ae0m63Lh1jeq7m5OfJFFn3sQsTHEinWB3TNoThvqcMc&s=4P7ptULo0yc5dJgdXg1iuVXaOW2biwXl8Olqik-aGeo&e=> | Twitter[twitter.com] <https://urldefense.proofpoint.com/v2/url?u=http-3A__twitter.com_BlakesLaw_&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=ae0m63Lh1jeq7m5OfJFFn3sQsTHEinWB3TNoThvqcMc&s=V5Uob5wjaNzZf56S-3YVPDbDvHw1c5_nwei8kbpKfJg&e=> | Unsubscribe[blakes.com]<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blakes.com_English_Resources_Bulletins_Pages_unsubscribe.aspx&d=DwMGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=ae0m63Lh1jeq7m5OfJFFn3sQsTHEinWB3TNoThvqcMc&s=H7EZsxIJdHRFAWtLKIZJ2zbFXrS0NoZld20cmOHbut0&e=>

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: Friday, October 13, 2017 3:49 PM
To: Tobias P. Whitfield (MOF); Malle Hanslep (MOF); Veinot, Cindy (TBS); Anna Strathy; Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); ASHBOURNE, STEPHEN; Hresa Gavaris
Cc: Gadi Mayman; John Psinas
Subject: RE: Response to OPG

Hi Toby

These reflect that changes we discussed yesterday and can be sent out subject to any comments from Mike and Carlos. However, as per my conversation with Malle and subsequently with Gadi, we are running out of time and need to come to a meeting of the minds with OPG on this issue.

To that extent perhaps we can move towards finalizing this issue sometime next week and in order to do so indicate in the covering email to OPG that we would like them to review the September 27th document from the perspective of what impacts on the integrity of the proposed accounting treatment and get back to us hopefully Monday.

That will provide us with a baseline that can be either accepted or tweaked within reasonable limits allowing the process to move forward. With regard to the "failsafe" it may be useful to mention in the covering email that we are open to making changes.

I would also request that we include if possible in the email that the incorporation documents of the Financing Entity include a clause that prohibits the FE from issuing debt that contravenes the terms of the Guaranty. This along with the attestation or certificate for each debt issue should in my opinion constitute a reasonable safeguard of the Province's interests. Not sure whether this will also impact on the integrity of the accounting but we won't know until we ask.

Thanks

Ken k

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Friday, October 13, 2017 3:12 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; James Devine <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Carlos Yep <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Usman Zahid <Usman.Zahid@ofina.on.ca<mailto:Usman.Zahid@ofina.on.ca>>; Anis Hirani <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; 'stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>' <stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca<mailto:Hresa.Gavaris@ofina.on.ca>>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; John Psinas <John.Psinas@ofina.on.ca<mailto:John.Psinas@ofina.on.ca>>
Subject: RE: Response to OPG

Please see some proposed changes to the note to be sent to OPG. They are tracked to Stephen's document circulated in advance of yesterday's meeting.

Please let me know if you have any additional comments or concerns.

The intention would be to send this out to OPG by end of day, so please provide comments asap.

Thanks
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

_____

From: Hansley, Malle (MOF)
Sent: October 13, 2017 1:34 PM
To: Veinot, Cindy (TBS); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>'; Gavaris, Hresa (OFA)
Cc: Mayman, Gadi (OFA); John Psinas
Subject: RE: Response to OPG

Hi Cindy,

Thanks for your response. We appreciate how busy you are and that you are reviewing the materials. We are planning to respond to OPG today.

We wanted to touch base with you again before we send the response because OPG had the question "Please also advise if the Province's accountants have reviewed the proposal." In their email to the Province so wanted to respond to that along the lines of the following if it's ok with you.

"The Province's accountants are involved in this process and are also reviewing the proposal."

Thanks.

Malle

_____

From: Veinot, Cindy (TBS)
Sent: October 13, 2017 9:31 AM
To: Hansley, Malle (MOF); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>'; Gavaris, Hresa (OFA)
Cc: Mayman, Gadi (OFA); John Psinas
Subject: RE: Response to OPG

Hi Malle – thanks for the note -- when I left the call, I thought the plan was to proceed providing detailed comments to OPG – I don't think you should hold up that process for my review. I will review the documents, but can't commit to providing comments back today.

Thanks,

Cindy

---

From: Hanslep, Malle (MOF)
Sent: October 13, 2017 9:13 AM
To: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>'; Gavaris, Hresa (OFA)
Cc: Mayman, Gadi (OFA); John Psinas
Subject: RE: Response to OPG

Hi Cindy,

I am following up regarding the conference call yesterday. At the end of the meeting, the group decided that it was best to respond to OPG with general comments along the lines of what was in the draft comments reviewed at the meeting and highlighting in particular that we would like to receive specific comments on the draft process sent on September 27, 2017.

I understand that you will be reviewing these materials today and we are hoping that you can provide your comments back to the group today so that we can take them into account in the Province's response.

Thank you for your assistance – we know that you are pressed with many priority items.

Malle

Malle Hanslep
Deputy Director
Ministry of the Attorney General
Ministry of Finance Legal Services Branch
Telephone: 416-325-1457

Notice: This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

-----Original Appointment-----
From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
Sent: October 12, 2017 12:16 PM
To: Anna Strathy; Whitfield, Tobias P. (MOF); Manning, Mike (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); 'stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>'; Gavaris, Hresa (OFA)
Cc: Mayman, Gadi (OFA); John Psinas
Subject: Adherence Process for Change of Law Protection Agreement | OFA, OPCD, MOF, Legal Counsel
When: October 12, 2017 3:00 PM-3:45 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Executive Boardroom, 14th Floor, 1 Dundas Street OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to moderate

Please call Hresa at 5-8002 upon arrival

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Mike Manning
**To:** William Tan
**Cc:** Sarah Harris
**Subject:** Re: Signatures for FHP Credit Facility and existing Amending Agreement 10 Credit Facility
**Date:** Friday, November 03, 2017 10:05:33 PM

---

Will be in Monday morning.
Thanks, Mike

On Nov 3, 2017, at 5:21 PM, William Tan <William.Tan@ofina.on.ca> wrote:

> Hello Mike,
>
> Unfortunately, today there were signature complications on IESO's side and our side. We have arranged to have the agreements signed as counterparts early Monday morning. Once I am able to confirm that IESO has signed their agreements I will require an OFA signatory to sign the agreements at our end. May I ask if you will be available Monday morning to sign?
>
> Agreements required for signature:
>
> <!--[if !supportLists]-->● <!--[endif]-->$2B FHP Credit Facility Agreement,
> <!--[if !supportLists]-->● <!--[endif]-->Existing Amending Agreement No. 10 Credit Facility
> <!--[if !supportLists]-->● <!--[endif]-->Promissory note
>
> Best regards,
>
> **Will Tan**| *Documentation & Analysis Specialist*
> Capital Markets Division | Ontario Financing Authority
> 1 Dundas Street West, Suite 1400
> Toronto, Ontario M5G 1Z3, CANADA
> Tel. (416) 325-8090 | Fax: (416) 860-8346
> william.tan@ofina.on.ca
>
> This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Anthony Reiss (MGS) |
| **Cc:** | Tobias P. Whitfield (MOF); Gadi Mayman; Malle Hanslep (MOF); Keley Katona (ENERGY); Hilary Cox (ENE); Mike Manning; Ronald Kwan; Ken Kandeepan; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | Re: TB Submission for Change of Law Protection Agreement |
| **Date:** | Tuesday, September 12, 2017 3:39:04 PM |

Thanks Toby, Anthony. I'll circulate track-change and clean versions this evening as well as an updated deck.

Sent from my iPhone

On Sep 12, 2017, at 3:34 PM, Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca> wrote:

> Thanks Toby!
> Hi Anna,
> Based on the changes I would require an updated slide deck. We have another TBS analyst who would be taking this forward so would like to give him a copy of the submission once everyone is comfortable that the submission is stable. Still need to make sure that we are consistent with the request to TB/MBC and the minuting at the end.
> Thanks,
> Anthony
>
> **From:** Whitfield, Tobias P. (MOF)
> **Sent:** September 12, 2017 2:45 PM
> **To:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (ENERGY) <Tom.McKinlay@ontario.ca>
> **Subject:** TB Submission for Change of Law Protection Agreement
> Please find attached a markup of the TB submission, as well as a revised term sheet and OIC.
> The term sheet is as we have discussed further with Blakes, and as revised by them to reflect our discussions. The document has been renamed to a “protection agreement” because the authority and the obligation is not necessarily an assumption of the obligations of a Financing Entity, and is rather the payment of such obligations. I have attached both the clean and blacklined versions.
> The OIC draft is an update of the latest version that was circulated, with the notes to draft removed as there were no further comments.
> We have marked up the TB submission to reflect the current status of the negotiation of the term sheet and subject to necessary approvals. We have deleted the attached term sheet from the markup so that the revised version can be inserted instead. We also think it makes sense to include the draft OIC in the TB materials.
> Please let me know if you have any comments or questions.
> Toby
> Tobias Whitfield

Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

**From:** Anna Strathy
**To:** Anthony Reiss (MGS)
**Cc:** Ken Kandeepan; Mike Manning
**Subject:** Re: TB Submission for Change of Law Protection Agreement questions
**Date:** Thursday, September 14, 2017 3:25:31 PM

---

I'm sorry, Anthony. You're right! I learned something new today. Just checked public accounts and didn't realize that we carried IOD for the Province under "Treasury".

I understand that's where the IOD for FHP would reside, not in a new, separate line.

Anna

Sent from my iPhone

On Sep 14, 2017, at 3:08 PM, Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca> wrote:

> Thanks Anna,
> The IOD is reported per Public Accounts – Volume 1, IOD is reported by Treasury Program (OFA) and consolidated under MOF. Will the IOD under the Fair Hydro Plan have a separate category ? Or will it follow under the current ?
> Anthony
>
> ---
>
> **From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
> **Sent:** September 14, 2017 3:03 PM
> **To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
> **Cc:** Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anthony,
> My responses below in red. By copy I'm asking Ken and Mike to confirm or amend.
> Thanks, Anna
>
> ---
>
> **From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
> **Sent:** Wednesday, September 13, 2017 3:31 PM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** RE: TB Submission for Change of Law Protection Agreement questions
> Hi Anna,
> Sorry, another question that came up was would the IOD be the same category on what is currently being used ?
>
> <!--[if !supportLists]-->● <!--[endif]-->I'm not sure what you mean here. Should one of the triggering events occur, and the Province step in to make payments on behalf of the Financing Entity, the interest payments on the debt assumed by the Province would be added to the Province's interest on debt (IOD). IOD is not held in a specific Ministry, but rather for the Province as a whole.
>
> What jurisdictions would the Change of Law Protection Agreement be used.
>
> <!--[if !supportLists]-->● <!--[endif]-->The Province of Ontario enters into the agreement with the Financing Entity to provide protection to investors.

Provincial Law governs the agreement. Investors are expected to be within the Canadian market.

THANKS!

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 3:25 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: TB Submission for Change of Law Protection Agreement questions

Thanks so much, Anthony. The house successfully closed! Phew! Happy to have that done.

I'll ask OPCD for feedback. Any word on the timing of the DM briefing so that I can let OPCD know our timelines?

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 3:15 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** TB Submission for Change of Law Protection Agreement questions

Hi Anna,

I just finished my CAO briefing.

We would like OPCD feedback before our DM briefing and confirmation where would the liability be held in the event the Province takes on the debt ? Which Ministry/Entity would it reside in ?

Let me know what is feasible.

I hope your house closes smoothly!!!!

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 1:47 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We'll likely have it tomorrow morning. Minister is signing sometime this evening.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 1:27 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Would you be able to send me a full sign-off package from MOE later today ?

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 1:25 PM

**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Looks good, Anthony. Nothing from me.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 1:16 PM
**To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi there,

Please find the attached TB20 Application. Please review and confirm any changes so I can update over here as well.

Thanks,

Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:49 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony, sorry about the confusion on the minute. The lawyers are fussing. We are going to keep it as is – no change.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:42 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,

Legal has just updated the minuting again.

Anna, with these further updates provided how did you want to proceed ?

Thanks,

Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 12:28 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Great, ENERGY DMO / MO are comfortable with the submission so whenever you have the signature page, I can arrange to have that provided for their Minister's signature.

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 12:15 PM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I'm working on the TB application now.
I will use what's in the TB submission.
Will need a review before I send it. So it would be early after lunch.
Thanks,
Anthony

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 12:07 PM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

We are going with the minuting in the TB Submission, v8, not the revised wording that Toby suggested this morning.

---

**From:** Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
**Sent:** Wednesday, September 13, 2017 12:06 PM
**To:** Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
I have sent a request up internally to see if that is possible.
Anna, since the TB20 application includes the minutes, what minuting are we using on the application, since it seems to have been updated again. I'm sure we want all the documents to be consistent.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:57 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Anthony,
ENERGY CSD is not involved in this process and MOF has been leading the submission. My office will deliver a package for Minister of Energy signature. What I'm asking for is the TB20 form the Minister signs. Can you please provide?
Thanks,

Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:55 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED MOE signed package - TB Submission for Change of Law Protection Agreement

Hi Keley,
The Minister of Energy should be signing the same documents as our Ministry, including the TB20 application. MOE controllership should prepare the complete package for sign-off, including the TB20 application.
Would we have a complete signed package by end of day today from Energy ?
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:49 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** RE: IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi Anthony,
I defer to you on what specific documents the Minister has to sign, however, from past experience, we would typically require Minister signature on the TB20.
Keley

---

**From:** Reiss, Anthony (MOF)
**Sent:** September 13, 2017 11:45 AM
**To:** Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Subject:** IMPORTANT UPDATE REQUIRED - TB Submission for Change of Law Protection Agreement

Hi there,
Please advise what documents the Minister of Energy is signing ?
As it is a joint submission he should be signing a number of documents including a TB20 Application.
I have a CAO information briefing at 2:30 and will want to know about MOE approvals and documentation.
Thanks,
Anthony

---

**From:** Katona, Keley (MOF)
**Sent:** September 13, 2017 11:36 AM
**To:** Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>
**Cc:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>
**Subject:** RE: Revised slide deck - TB Submission for Change of Law Protection Agreement

Thanks for updating this. Do you know when the signing package will be available? The ENERGY Minister is only available until end of day so would like to get that over to ENERGY DMO. Thanks.

---

**From:** Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
**Sent:** September 13, 2017 9:16 AM
**To:** Reiss, Anthony (MOF) <Anthony.Reiss@ontario.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** Revised slide deck - TB Submission for Change of Law Protection Agreement
A revised slide deck is attached. This version reflects the changes in the latest draft of the TB submission circulated last night (v8), with one exception: Malle, I have not changed the wording of the triggering events in the slide deck to match the more technical wording contained in the submission. I wanted to keep the deck plain-language.

---

**From:** Anna Strathy
**Sent:** Monday, September 11, 2017 5:04 PM
**To:** Anthony Reiss (MGS) <Anthony.Reiss@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
**Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
**Subject:** CEO Approved TB Submission for Change of Law Assumption Agreement
Anthony, Keley, Malle,
Please find attached, the CEO-approved TB Submission for the Assumption Agreement tracking to TB/MBC for the Sep 26 meeting. This version now incorporates input from Energy. I'm also attaching, for your briefing purposes, a deck (slightly revised from the one Keley prepared for the Minister of Energy's briefing two weeks ago).
Keley, could I ask you to please pass this version of the submission along to the Energy DMO for review?
Malle, we'll be looking for Legal sign-off tomorrow. Not sure if you or Michael will be signing off, but I'm happy to swing by 777 Bay at your convenience tomorrow with the approval package.
Anthony, I'll resend a scan with Legal sign-off once we have it.
Please don't hesitate to contact me should you have any questions.
Thanks, Anna

**Anna Strathy**
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

**From:** Gadi Mayman
**To:** Anna Strathy
**Cc:** Ken Kandeepan; Ronald Kwan; Mike Manning
**Subject:** Re: Updated Materials
**Date:** Tuesday, October 03, 2017 10:56:44 PM

---

In our paragraph near the end of the government response, the second mention of FAO should have a “the” in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don’t have numbers in their title?)

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word “way” instead of “was”. In the first paragraph, I think it reads more clearly if, in the last sentence, between “as an asset and” and “in accordance with” we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with “in accordance with the accounting definition.” Since I’m being unnecessarily fussy, let me even go as far as to suggest if we do that, we could get rid of the second and in the sentence: “... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. “

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> FYI attached, and please let me know if you have any comments as soon as possible.
>
> Note that we’ll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I’ll check in with Erica’s team to get an electronic copy of the final for tomorrow.
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> Begin forwarded message:
>
> > **From:** "McLean, David (MOF)" <David.McLean@ontario.ca>
> > **Date:** October 3, 2017 at 8:57:03 PM EDT
> > **To:** "Martin Schlaepfer (MOF)" <Martin.Schlaepfer@ontario.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>, "Kyle MacIntyre (MOF)" <Kyle.MacIntyre@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>
> > **Cc:** "William Bromm (CAB)" <William.Bromm2@ontario.ca>
> > **Subject: Updated Materials**

Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

**Next Steps**:

- <!--[if !supportLists]-->● <!--[endif]-->In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.
- <!--[if !supportLists]-->● <!--[endif]-->Please have staff review the documents one last time and ask that they note any required changes in the clean versions.
- <!--[if !supportLists]-->● <!--[endif]-->The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.
- <!--[if !supportLists]-->● <!--[endif]--><u>**Please reply-all with any edits by 11:00AM**</u>.
- <!--[if !supportLists]-->● <!--[endif]-->I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.
- <!--[if !supportLists]-->● <!--[endif]-->I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

**David McLean**
*Executive Assistant*
*and Special Policy Advisor*
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca

**From:** Gadi Mayman
**To:** Ronald Kwan
**Cc:** Anna Strathy; Ken Kandeepan; Mike Manning
**Subject:** Re: Updated Materials
**Date:** Tuesday, October 03, 2017 11:54:41 PM

---

I agree with including the older Annual Reports instead of last year's, as I think they're more relevant to the point that we're trying to make about the DRC. I also think it's a good suggestion to include the last Ontario Hydro report.

Gadi

On Oct 3, 2017, at 11:46 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> I added in a comment on the OEFC row, as follows:
>
> Suggest providing the 2000-2001 Annual Report instead, as it shows the first two years of OEFC's financial statement results, including the "revenue pool residual" (or "proxy DRC"), which was the allocation to OEFC from the continuing bundled rate of the old Ontario Hydro that continued on until the market opened to competition on May 1, 2002, and the rates were unbundled and the DRC began. Could also include the 2002-03 Annual Report too, which discusses the revenue pool residual amounts coming in until the DRC started.
>
> Could also include the final Ontario Hydro Annual Report too, which shows its positive operating results, before writedowns, and significant debt pay down, under the amounts of revenue collected through the bundle rate (which was frozen for about eight years (referred to as six years of stable rates in the OH AR plus the first two years of OEFC) – demonstrating the debt cost recovery was in place before April 1, 1999..
>
> And ARs, as attached.
>
> Ron
>
> From: Ronald Kwan
> Sent: October-03-17 11:02 PM
> To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
> Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> Subject: RE: Updated Materials
>
> Hi Gadi,

I was just noting the “was” typo correction too. And agreed on the need for a comma.

Ron

From: Gadi Mayman
Sent: October-03-17 10:57 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Mike Manning <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>
Subject: Re: Updated Materials

In our paragraph near the end of the government response, the second mention of FAO should have a “the” in front of it. One time in that paragraph we spell out thirty year, and in the other reference we say 30-year. We should be consistent. I prefer the former. We should also include the thirty year reference in the chart, on page 2 in the second box on Summary of Concerns where we reference the $4 billion amount (why is this marked 2.0, but the other Summary of Concerns boxes don’t have numbers in their title?)

Also in the chart, the second last paragraph of the section on the DRC, last sentence, has the word “way” instead of “was”. In the first paragraph, I think it reads more clearly if, in the last sentence, between “as an asset and” and “in accordance with” we stick in a comma, or we move that whole clause to the end of the sentence after CEA and end with “in accordance with the accounting definition.” Since I’m being unnecessarily fussy, let me even go as far as to suggest if we do that, we could get rid of the second and in the sentence: “... will be set up as an asset which generates a specific revenue stream in the form of the CEA, in accordance with the accounting definition. “

On Oct 3, 2017, at 9:50 PM, Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>> wrote:
FYI attached, and please let me know if you have any comments as soon as possible.

Note that we’ll need the OEFC 2016-17 Annual Report as supporting material for the DRC/stranded debt comment. I’ll check in with Erica’s team to get an electronic copy of the final for tomorrow.
--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:
From: "McLean, David (MOF)" <David.McLean@ontario.ca<mailto:David.McLean@ontario.ca>>

Date: October 3, 2017 at 8:57:03 PM EDT
To: "Martin Schlaepfer (MOF)"
<Martin.Schlaepfer@ontario.ca<mailto:Martin.Schlaepfer@ontario.ca>>, Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>, "Kyle MacIntyre (MOF)"
<Kyle.MacIntyre@ontario.ca<mailto:Kyle.MacIntyre@ontario.ca>>, "Patrick Laughton (MOF)"
<Patrick.Laughton@ontario.ca<mailto:Patrick.Laughton@ontario.ca>>
Cc: "William Bromm (CAB)"
<William.Bromm2@ontario.ca<mailto:William.Bromm2@ontario.ca>>
Subject: Updated Materials
Hi all,

I've attached clean and tracked versions of the government response and consolidated comments. The joint-DM memo remains unchanged from what was shared at the meeting today, so only including a clean version of that.

Next Steps:

· In the consolidated comments document, please have staff confirm that any required supporting evidence is provided to me. If anything in that column is marked with a 'Y', please have staff add in "Please see [name of document/attachment]". If we can direct the AG to something online (e.g., standards), a hyperlink would be fine. If no material can be provided, please ensure the box is changed to 'N'.

· Please have staff review the documents one last time and ask that they note any required changes in the clean versions.

· The key focus at this point should be the government response. At this stage, changes to the consolidated comments should be kept to a minimum.

· Please reply-all with any edits by 11:00AM.

· I will coordinate having the joint-DM memo signed. We'll have to work together to get it in front of each of them (separately is fine) before 12:30.

· I will aim to distribute a final package by 1:00. The target for getting it to the AG is 2:00.

Thanks again to you and your teams for all the help.

Dave

David McLean
Executive Assistant
and Special Policy Advisor
Deputy Minister's Office
Ministry of Finance
416-327-0192
david.mclean@ontario.ca<mailto:david.mclean@ontario.ca>

**From:** Anna Strathy
**To:** Ronald Kwan; Mike Manning; Ken Kandeepan
**Subject:** Regroup on Provincial Protection Agreement
**Date:** Tuesday, September 19, 2017 8:47:33 AM

---

I thought we may want to regroup with Gadi this morning on yesterday's meeting with OPG and Tory's. Could you please advise of your availability between 9:30am and 12pm?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**From:** Anna Strathy
**To:** Ken Kandeepan; Ronald Kwan; Mike Manning; Gadi Mayman
**Subject:** Regroup on Provincial Protection Agreement

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); Tom McKinlay (MAG); Thouin, Alena (ENERGY); Ken Kandeepan; Mike Manning; Ronald Kwan; Usman Zahid |
| **Subject:** | Regroup: Protection Agreement, Alternative Option |

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
Anna to Moderate

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Anna Strathy; Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Subject:** | Review Draft Guarantee & Procedures Document \| OFA, OPCD, MOF, Legal Counsel |

---

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Tobias P. Whitfield (MOF); Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Tom McKinlay (MAG); Thouin, Alena (ENERGY); "stephen.ashbourne@blakes.com"; Hresa Gavaris; John Psinas |
| **Cc:** | Steen Hume (CAB); Daniel Cayley (ENERGY) |
| **Subject:** | Review Draft Guarantee & Procedures Document \| OFA, OPCD, MOF, Legal Counsel |

Nov 2: Rescheduled from 10:00am to 12:00pm
MOF Legal is expecting a second draft between 9 and 10am today. The later meeting time will allow time to review prior to discussing.
Lunch will be provided

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
OFA to Moderate

| | |
|---|---|
| **From:** | ASHBOURNE, STEPHEN |
| **To:** | Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Mike Manning; Ken Kandeepan; Ronald Kwan; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca); Tom McKinlay (MAG) |
| **Cc:** | VINER, JON |
| **Subject:** | SRA Comments on the Process Agreement |
| **Date:** | Friday, November 17, 2017 2:28:19 PM |
| **Attachments:** | 23239361-v12-CLPA - Process Agreement.DOCX<br>23239361-vpdf-CLPA - Process Agreement.PDF |

---

Please see attached.

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

———————————

**Blake, Cassels & Graydon LLP**
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
**blakes.com**[blakes.com] | **Twitter**[twitter.com] | **Unsubscribe**[blakes.com]

**Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents**
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.
L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[1]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[2]

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

---

[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare.

[2] Once agreements are settled, Province to provide draft notice.

## AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### 1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used, (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Not less than 10 Business Days prior to (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a copy of such proposed change or supplement to the Transaction Document and any such additional or replacement Transaction Document, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

**2.02 Covenants**

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) resign as the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension

right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement nor in the Change of Law Protection Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation, and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[3]

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in

[3] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.

compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

**3.02 Intentionally Deleted**

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

**4.01 Protection Agreement Maximum**

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of

Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 <u>Representations and Warranties of the Province</u>**

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[4]

### 6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit A (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Information Notice to OPG (the "**Proposed Assumption Date**").

### 6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be

[4] Note: Lawyers to discuss assumption mechanics.

considered to be material to the assumption and performance of the Obligations Secured by the Province; and

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

**6.03 Settlement of Terms**

Following receipt and review by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice and Article VI of this Agreement shall continues to apply unaffected.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use commercially reasonable efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a**

**commercially reasonable basis under a Derivative Agreement][NTD: Subject to the input of the dealers.]**[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

---

[5] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

**8.02 Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

## SCHEDULE A
## DEFINED TERMS[6]

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[6] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Information Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement but in no event shall it include obligations to service providers or amounts payable by the Financing Entity to a counterparty under any agreement permitted to be entered into by the Financing Entity pursuant to the Program Agreements.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ELECTION INFORMATION NOTICE**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

**AND**

**ONTARIO POWER GENERATION INC.**

# CHANGE OF LAW PROCESS AGREEMENT

**Dated as of [■], 2017**

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[1] is made and entered into as of [■], 2017.

## RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[2]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.[3]

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

[1] ~~We do not believe OPG is entering into this Agreement as agent on behalf of the Trust. Rather, OPG is entering into this Agreement at the request of its shareholder, the Province, in order to satisfy the Province's reporting requirements regarding the Fair Hydro Plan.~~

[2] ~~Blakes to advise what they would like to see as evidence of OPG's establishment of the Trust as a financing entity. OPG can send the Province the retainer of Computershare to act as issuer trustee to the Trust~~[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare.

[3] Once agreements are settled, Province to provide draft notice.

All things necessary to make this Agreement a valid and legally binding agreement of OPG~~,~~ and ~~of~~ the Province ~~in accordance with the Act~~, have been done.

**AGREEMENT OF THE PARTIES**

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**
**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

**1.01 Interpretation**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the

designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

**1.02 References to the Financing Entity**

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

**1.03 Effect of Headings**

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

**1.04 Successors and Assigns**

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

**1.05 Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**1.06 Governing Law**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

### 1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

### 1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

### 1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

### 1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

### 1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

## ARTICLE II
## COVENANTS OF OPG

**2.01 Deliveries to the Province**

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used ~~or~~, (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or~~,~~ supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Not less than 10 Business Days prior to (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a copy of such proposed change or supplement to the Transaction Document and any such additional or replacement Transaction Document, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) ~~(c)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) ~~(d)~~ Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

**2.02 Covenants**

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of ~~its~~the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements ~~(other than Funding Obligation Agreements)~~, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;[4] provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) resign as the Manager under the Management Agreement; or

(C) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) ~~(ii)~~ promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

[4] ~~Note to the Province: This change was made to ensure that the Province does not have veto rights over the financial terms of the Funding Obligations (consistent with the overall agreement including in particular sections 3.01 and 3.04(a)).~~

(iv) ~~(iii)~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement nor in the Change of Law Protection Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

## ARTICLE III
## PROCESS CERTIFICATE

### 3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation, and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[~~5~~3]

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

[~~5~~3] Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

**3.02 ~~Acknowledgment~~Intentionally Deleted**

~~The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, any two senior officers of OPG are authorized to deliver the certificate referred to in Subsection **[4.02(b)]** of the Change of Law~~

~~Protection Agreement to the Indenture Trustee confirming that OPG has delivered to the Province all certifications required by the Province in connection with the incurrence of the Primary Obligations in respect of which such certificate is delivered.~~

**3.03 Meaning of "Reviewed Documentation"**

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to OPG; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

**3.04 Meaning of "Substantially in the Form"**

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document

complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

## ARTICLE IV
## PROTECTION AGREEMENT MAXIMUM

### 4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised

Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES

### 5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or

any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

**5.02 Representations and Warranties of the Province**

The Province hereby represents and warrants that:

(a) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution~~,~~ and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

## ARTICLE VI
## PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[64]

**6.01 Election by the Province**

~~At~~Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor~~. To make such~~ by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province ~~shall duly complete and~~may deliver to OPG a notice in the form of Exhibit A (an "**~~Exploration~~Election Information Notice**"). The ~~Exploration~~Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the ~~Exploration~~Election Information Notice to OPG (the "**Proposed Assumption Date**").

**6.02 Details regarding Obligations Secured**

Promptly following the delivery of the ~~Exploration~~Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

[64] Note: Lawyers to discuss assumption mechanics.

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province; and

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

**6.03 Settlement of Terms**

~~Within 30 Business Days following~~Following receipt and review by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it ~~will~~expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province ~~intends~~expects that assignment and assumption will be effected~~, which may not be earlier than the Proposed Assumption Date~~. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section ~~[~~6.01~~]~~ of the Change of Law Protection Agreement~~, which will specify such date as the "Assumption Closing Date" for the purposes thereof~~. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice and Article VI of this Agreement shall continues to apply unaffected.

**6.04 Cooperation to Implement the Assignment and Assumption**

OPG shall cooperate with the Province and, as FSM, will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

**6.05 Terms of Obligations Secured**

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use ~~its~~ commercially

reasonable efforts to ~~cause the Financing Entity to~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, **[other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement][NTD: Subject to the input of the dealers.]**[5]

## ARTICLE VII
## BREACH EVENTS

### 7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

### 7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to OPG, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a

[5] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

Suspension Notice to the Indenture Trustee, OPG and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

## ARTICLE VIII
## MISCELLANEOUS

### 8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

### 8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

**8.03 Assignment**

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

**8.04 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8.05 FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

**8.06 Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

***[Signature page to follow]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE**

By: _____

Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY**

By: _____

Name:
Title:

**ONTARIO POWER GENERATION INC.**

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.[7]

**COMPUTERSHARE TRUST COMPANY OF CANADA**, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

~~By:~~ ~~**ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager~~

By: _____

Name:
Title:

By: _____

Name:
Title:

[7] ~~The Indenture Trustee was removed as a party to this Agreement as it is not subject to any of the provisions in this Agreement.~~

**SCHEDULE A**
**DEFINED TERMS[86]**

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement. ~~[NTD: To confirm if Change of Law Protection Agreement will attach a form of assumption.]~~

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar

[8] ~~Province should not have~~[6] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. ~~Province is given sufficient notice of all amendments by the terms of this Agreement~~All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"~~**Exploration**~~**Election Information Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement but~~, for greater certainty, excludes the "other amounts owing in respect of the funding obligations" in Section 2(2) of the General Regulation~~ in no event shall it include obligations to service providers or amounts payable by the Financing Entity to a counterparty under any agreement permitted to be entered into by the Financing Entity pursuant to the Program Agreements.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

**EXHIBIT A**
**FORM OF ~~EXPLORATION~~ELECTION INFORMATION NOTICE**

Document comparison by Workshare Compare on Friday, November 17, 2017 2:25:52 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23239361/11 |
| Description | TOR_2528-#23239361-v11-CLPA_-_Process_Agreement |
| Document 2 ID | PowerDocs://TOR_2528/23239361/12 |
| Description | TOR_2528-#23239361-v12-CLPA_-_Process_Agreement |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 66 |
| Deletions | 67 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 137 |

**From:** William Tan
**To:** Mike Manning
**Cc:** Sarah Harris
**Subject:** Signatures for FHP Credit Facility and existing Amending Agreement 10 Credit Facility
**Date:** Friday, November 03, 2017 5:21:48 PM

---

Hello Mike,

Unfortunately, today there were signature complications on IESO's side and our side. We have arranged to have the agreements signed as counterparts early Monday morning. Once I am able to confirm that IESO has signed their agreements I will require an OFA signatory to sign the agreements at our end. May I ask if you will be available Monday morning to sign?

Agreements required for signature:

- $2B FHP Credit Facility Agreement,
- Existing Amending Agreement No. 10 Credit Facility
- Promissory note

Best regards,

**Will Tan**| *Documentation & Analysis Specialist*
Capital Markets Division | Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3, CANADA
Tel. (416) 325-8090 | Fax: (416) 860-8346
william.tan@ofina.on.ca

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Ronald Kwan; Ken Kandeepan; Mike Manning |
| **Cc:** | Gadi Mayman |
| **Subject:** | Speaking Points for Minister Sousa |
| **Date:** | Monday, October 16, 2017 11:23:10 AM |
| **Attachments:** | MINISTER SOUSA SPEAKING POINTS.docx |

Good morning,

The DMO has asked that we prepare speaking points for Minister Sousa to use in response to the AG's report (to be released tomorrow at 10:30am).

I've put together the attached, based on Q&As and speaking points that we prepared previously.

Note, Scott Nelms' group is going to be preparing points on why the OFHP isn't reflected in the fiscal plan/deficit.

Could I ask for your review and comment asap?

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

**MINISTER SOUSA SPEAKING POINTS**
**AUDITOR GENERAL'S SPECIAL REPORT ON THE ONTARIO FAIR HYDRO PLAN**

*(GBED to provide language on fiscal plan)*

- The policy objective of OFHP is to more fairly allocate the cost to ratepayers over the useful life, not the contractual term, of the electricity generating assets.

- Therefore, it was a primary policy objective to ensure that the costs are borne by the beneficiaries of the electricity system – the ratepayers – not the tax-base.

- Having the rate-base pay is not a new policy, for example Hydro One has borrowed in the capital markets since the early 2000s.

- We believe it is appropriate for ratepayers to pay for the financing of electricity assets. The rate-base has a different risk profile than the tax-base, which would be reflected in different interest costs.

- The $4 billion figure in the Office of the Auditor General's report was sourced from the FAO's May 2017 report, and it is important to note, that the FAO's calculation was based on preliminary estimates of the program when peak debt estimates for the thirty year program were substantially higher than current projections.

- OPG has the necessary financing and commercial expertise to assist with refinancing the Global Adjustment (GA) and will ensure that it is done in an efficient and cost-effective manner.

**From:** Mike Manning
**To:** John Kim
**Subject:** Subordinated Debt
**Date:** Wednesday, November 15, 2017 9:40:33 AM

---

Hi John:
We are having a meeting at 11:30 this morning on the subordinated debt for Fair Hydro in the Capital Markets Boardroom I believe. Would be great if you could attend . Other attendees Jim, Carlos & Ken k.

Regards, Mike

| | |
|---|---|
| **From:** | Whitfield, Tobias P. (MOF) |
| **To:** | Gadi Mayman; Malle Hanslep (MOF); Anna Strathy; Anthony Reiss (MGS); Keley Katona (ENERGY); Hilary Cox (ENE); Mike Manning; Ronald Kwan; Ken Kandeepan; Thouin, Alena (ENERGY); Tom McKinlay (MAG) |
| **Subject:** | TB Submission for Change of Law Protection Agreement |
| **Date:** | Tuesday, September 12, 2017 2:45:24 PM |
| **Attachments:** | TB20 Submission_Provincial Support Agreement_V7-MOF Legal Comments.docx<br>23148306-vpdf-Term Sheet - Provincial Support Agreement - May 12.pdf<br>23148306-v15-Term Sheet - Provincial Support Agreement - Sept. 12.docx<br>OIC - FHP S.5 Draft September 12.doc |

---

Please find attached a markup of the TB submission, as well as a revised term sheet and OIC.

The term sheet is as we have discussed further with Blakes, and as revised by them to reflect our discussions. The document has been renamed to a "protection agreement" because the authority and the obligation is not necessarily an assumption of the obligations of a Financing Entity, and is rather the payment of such obligations. I have attached both the clean and blacklined versions.

The OIC draft is an update of the latest version that was circulated, with the notes to draft removed as there were no further comments.

We have marked up the TB submission to reflect the current status of the negotiation of the term sheet and subject to necessary approvals. We have deleted the attached term sheet from the markup so that the revised version can be inserted instead. We also think it makes sense to include the draft OIC in the TB materials.

Please let me know if you have any comments or questions.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

# CHANGE OF LAW PROTECTION ~~ASSUMPTION~~ AGREEMENT

**1. PROGRAM/BRANCH:** Ontario Financing Authority

**2. SUMMARY OF REQUEST:**

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the Ontario Fair Hydro Plan Act, 2017 ("OPG Financing Entities"), that, under certain circumstances as set out in the ~~Change of Law Assumption Agreement ("assumption agreement"),~~proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

This submission is to request that Treasury Board:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a~~n assumption~~protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities ~~under~~ substantially reflecting the terms set out in the Appendix and subject to such revisions that the two ministers acting together may determine;

(b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

~~specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and~~

~~specify a maximum liability for the guarantee or indemnity.~~

**3. BACKGROUND:**

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about $2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a change of law ~~assumption~~protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would ~~step in and assume~~pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the ~~assumption~~protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects ability of an ~~the~~OPG Financing Entity to receive amounts relating to its investments interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable~~A court decision that declares any funding obligations of the Financing Entity to be invalid or unenforceable~~; and
- [Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations. *Note: this third ~~assumption~~protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017*.]

In the event the ~~assumption~~protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as ~~it~~ they come~~s~~ due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to ~~assume~~ directly replace the OPG Financing Entity~~'s~~ with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.~~.~~

The ~~assumption~~protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in Council (OIC) ~~before a ministry~~to enter~~s~~ into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance,

together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

## 5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

DRAFT

## 6. RISKS:

If the ~~assumption~~protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the ~~assumption~~protection agreement is provided, the Province of Ontario takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated $24B to $26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the ~~assumption~~protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it ~~has assumed~~will be required to make under the ~~guarantee~~protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between $0.8B and $1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the ~~assumption~~protection agreement is triggered, and the Province ~~assumes~~ becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue or not, in some form. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

## 7. COMMUNICATION PLAN

Key Messages



DRAFT

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

## 8. RECOMMENDATION

(a) Approve that the Minister of Finance and Minister of Energy provide a ~~support~~ protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities ~~as contemplated under the *Ontario Fair Hydro Plan Act*, to one or more OPG Financing Entities under~~ substantially reflecting the terms set out in the Appendix and subject to such revisions that the two ministers acting together may determine;

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity.~~;~~

~~specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and~~

~~specify a maximum liability for the guarantee or indemnity.~~

DRAFT

## APPENDIX

Updated Draft to be Attached

Formatted: Centered

**~~Change of Law Assumption Agreement~~**

**~~Indicative Term Sheet~~**

**~~Ontario Fair Hydro Plan Act, 2017~~**

*~~This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.~~*

| | |
|---|---|
| **~~Change of Law Assumption Agreement:~~** | ~~A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture.~~ |
| **~~Obligor:~~** | ~~The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.~~ |
| **~~Indenture Trustee:~~** | ~~An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture.~~ |
| **~~Beneficiaries:~~** | ~~The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims.~~ |
| **~~Specified Claims:~~** | ~~Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.~~<br><br>~~Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].~~ |
| **~~Assumption Events:~~** | ~~Any of the following would constitute an Assumption Event:~~<br><br>~~(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;~~<br><br>~~(2) the Legislature enacts or amends any other statute;~~<br><br>~~(3) the Lieutenant Governor in Council repeals (and~~ |

| | |
|---|---|
| | does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Assume Specified Claims:** | Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim.<br><br>The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |

| | |
|---|---|
| ~~**Representations and Warranties:**~~ | ~~To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.~~ |
| ~~**Confidentiality Obligations:**~~ | ~~To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity.~~ |
| ~~**Governing Law:**~~ | ~~Province of Ontario.~~ |

**~~Change of Law Assumption Agreement~~Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law ~~Assumption~~Protection Agreement:** | A Change of Law ~~Assumption~~Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.<br>~~Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].~~ |
| **~~Assumption~~Protection Events:** | Any of the following would constitute ~~an Assumption~~a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute; |

| | |
|---|---|
| | (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br><br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law ~~Assumption~~Protection Agreement or any of the agreements under which Specified Claims arise ~~without the agreement of~~, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to ~~Assume~~Pay Specified Claims:** | Upon the occurrence of ~~an Assumption~~a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the ~~amount of~~ Specified Claims ~~on behalf of~~owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law ~~Assumption~~Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying ~~an amount to a Beneficiary in respect of~~ a Specified Claim to a Beneficiary, the Obligor ~~shall become~~as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity |

| | |
|---|---|
| | owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law ~~Assumption~~Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law ~~Assumption~~Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law ~~Assumption~~Protection Agreement applies to such Specified Claim.<br><br>The Change of Law ~~Assumption~~Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law ~~Assumption~~Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law ~~Assumption~~Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or |

| | |
|---|---|
| | representative of the Obligor in connection with the Change of Law ~~Assumption~~Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

Document comparison by Workshare Compare on Tuesday, September 12, 2017 12:27:10 PM

| Input: | |
|---|---|
| Document 1 ID | PowerDocs://TOR_2528/23148306/14 |
| Description | TOR_2528-#23148306-v14-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Document 2 ID | PowerDocs://TOR_2528/23148306/15 |
| Description | TOR_2528-#23148306-v15-Term_Sheet_-_Provincial_Support_Agreement_-_May_12 |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 27 |
| Deletions | 28 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 55 |

**Provincial Protections and Assurances**

**Indicative Term Sheet**

**Ontario Fair Hydro Plan Act, 2017**

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

| | |
|---|---|
| **Change of Law Protection Agreement:** | A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture. |
| **Obligor:** | The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together. |
| **Indenture Trustee:** | An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture. |
| **Beneficiaries:** | The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims. |
| **Specified Claims:** | Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. |
| **Protection Events:** | Any of the following would constitute a Protection Event:<br>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;<br>(2) the Legislature enacts or amends any other statute;<br>(3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or<br>(4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are |

| | |
|---|---|
| | appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*),<br><br>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or<br><br>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is *ultra vires* in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims. |
| **Obligation to Pay Specified Claims:** | Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits. |
| **Subrogation:** | Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent. |

| | |
|---|---|
| **Optional Replacement:** | At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement. |
| **Term:** | The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding. |
| **Obligor Approval:** | The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.<br><br>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.<br><br>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required. |
| **FIPPA:** | The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law. |
| **Representations and Warranties:** | To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity. |

| | |
|---|---|
| **Confidentiality Obligations:** | To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity. |
| **Governing Law:** | Province of Ontario. |

CONFIDENTIAL AND PRIVILEGED DRAFT – September 12, 2017

WHEREAS pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "Act"), the Lieutenant Governor in Council may by order authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest as described under the Act;

AND WHEREAS pursuant to subsection 22(2) of the Act, Ontario Power Generation Inc. as financial services manager, may establish or cause to be established one or more financing entities (a "Financing Entity") that may incur funding obligations in connection with investment interests**;**

AND WHEREAS it is considered desirable to authorize the Minister of Energy and the Minister of Finance to agree to guarantee or indemnify debts, obligations, securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity;

NOW THEREFORE:

1. Pursuant to subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017*, the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, are authorized to enter into one or more agreements to guarantee or indemnify the debts, obligations securities or undertakings of a Financing Entity associated with investment interests acquired by a Financing Entity.

2. The Minister of Energy and the Minister of Finance, acting together on behalf of Ontario are authorized to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee and indemnity authorized under paragraph 1 of this Order.

Recommended _____ Concurred _____

Minister of Energy/Minister of Finance Chair of Cabinet

Approved
and Ordered _____ _____

Date Lieutenant Governor

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Mike Manning; Ronald Kwan; Ken Kandeepan; Scott Nelms (ENERGY); James Devine; Carlos Yep; "Cengarle, John (MOF"; Keley Katona (ENERGY); Mark Donaldson (MOF); John Kim; Tom McKinlay (MAG); "Thouin, Alena (ENERGY"; "stephen.ashbourne@blakes.com"; Malle Hanslep (MOF); Usman Zahid |
| **Subject:** | Teleconference \| Obligor Approval Process |
| **Start:** | Wednesday, September 27, 2017 10:00:00 AM |
| **End:** | Wednesday, September 27, 2017 10:30:00 AM |
| **Location:** | Conference Call: 1-866-602-5461 or 416-212-8011 \| Conference ID: 4717656 |

---

Toll-free dial-in number: 1-866-602-5461
Local dial-in number: 416-212-8011
Conference ID: 4717656
Moderator: OFA

| | |
|---|---|
| **From:** | Anna Strathy |
| **To:** | Gadi Mayman |
| **Cc:** | Mike Manning; Ronald Kwan; Ken Kandeepan; John Kim |
| **Subject:** | Teleconference: Provincial Protection Agreement |
| **Date:** | Thursday, September 14, 2017 1:14:40 PM |

Hi Gadi,

A short summary of the call after you left (it didn't finish until 12:20pm):

**We finished your discussion around the *Event of Default Cure*:**

- to be addressed in the Protection Agreement. Term sheet will reflect language similar to Representations and Warranties section (i.e., To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity, subject to accounting/legal considerations)
- OPG expressed concern with punting issues off the term sheet and onto the Protection Agreement; given that timelines for drafting the Protection Agreement will be similarly compressed.

**We then went through the term sheet from the start:**

- Drafting changes will not be made
- Reference to comingling risk/warehousing to be removed
- Agreed that the protection agreement would also apply to the sub-debt
- Organizational change in IESO/market change will be narrowed (per Steve's wording)
- Under *Subrogation* remove the line "The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent" – gets to the accounting concern/Provincial control
- Clarified that the *Optional Replacement* was not the Province swapping out the Financing Entity for some other entity (dealers' concern), but rather the Province stepping in for the Financial Entity. Agreed to amended language

**Follow-ups:**

- With respect to the triggering event following from a court decision, there was a lengthy conversation about the wording "final, non-appealable". Steve felt it was necessary to keep in – to avoid any gaming of the system – and Tory's felt that it would be problematic for dealers (i.e., payments put on hold during lengthy litigation). OFA suggested we take the conversation offline. I'll schedule a call with Steve and Malle for this afternoon.
- Malle and Steve would like to review the Financing Plan at the earliest opportunity. The importance/urgency of reviewing the Financing Plan is unclear.

**Next steps:**

- Malle/Steve will mark up the version that went to the Minister with the changes discussed at the meeting
- Tory's will be able to sign-off on the revisions fairly quickly
- Tory's will present the mark-up to Osler's/dealers with instruction to focus on material points (not drafting issues)
- Meeting to be set up for early next week to deal with substantive issues for inclusion in the Protection Agreement; OPG to bring forward accounting issues as flagged by E&Y
- With respect to timing, OPG is going to its Board on September 29 with the Protection Agreement; Board will want comfort that E&Y has signed off

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

| | |
|---|---|
| **From:** | Mike Manning |
| **To:** | stephen.ashbourne@blakes.com; Malle Hanslep (MOF); Tobias P. Whitfield (MOF) |
| **Cc:** | Ken Kandeepan; Anna Strathy; Ronald Kwan |
| **Subject:** | US Dollar Debt |
| **Date:** | Tuesday, November 14, 2017 3:36:22 PM |

---

Not sure if this helps at this stage, but OPG happy to say protection agreement applies to Canadian dollar issuance only. They appreciate that US dollar issuance would be a different kind of animal.

Regards, Mike

| | |
|---|---|
| **From:** | TD DCM |
| **To:** | Brett Kichiy; "John Lee"; Linda Smith; Mike Manning; "Sheen Liu"; "Ken Ryfa"; "Janet Hahnparker"; ken.ryfa@opg.com; Kevin Shvarts |
| **Cc:** | Scace, Patrick; McDonald, Greg; Wolff, Michael; Begg, Graeme; Holloway, Harold; Becker, Andrew; Brennan, Emma; Hynes, Gordon; Pong, Brian; Laing, Mark |
| **Subject:** | Weekly Canadian Indicative New Issue Pricing \| Ontario Power Generation (09.11.17) |
| **Date:** | Monday, September 11, 2017 4:39:51 PM |
| **Attachments:** | OPG 09.11.17.pdf<br>OPG 09.11.17.xlsx |

---

Please find attached updated new issue indications.

**Theresa Mosley** | Associate | Debt Capital Markets | **TD Securities Inc.**

Ernst & Young Tower 7th Floor, 222 Bay Street, Toronto, ON M5K 1A2

**T: 416 944 5321** | theresa.mosley@tdsecurities.com

NOTICE: Confidential message which may be privileged. Unauthorized use/disclosure prohibited. If received in error, please go to www.td.com/legal for instructions.

AVIS : Message confidentiel dont le contenu peut être privilégié. Utilisation/divulgation interdites sans permission. Si reçu par erreur, prière d'aller au www.td.com/francais/avis_juridique pour des instructions.

| Bank Name | TD |
|---|---|
| Date | 9/11/2017 |

| Indicative OPG New Issue Spreads | Current | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | | | | |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Sep-22 | 1-Jun-19 | | | | |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 1.00% | 3.75% | | | | |
| Benchmark Yield | 2.38% | 2.03% | 1.75% | 1.54% | | | | |
| Curve Adjustment (bp) | 0 | 1.5 | 0.2 | 1.5 | | | | |
| Spread to GoC Curve (bp) | 159 | 112 | 90 | 62 | | | | |
| Re-Offered Yield | 3.97% | 3.16% | 2.65% | 2.17% | | | | |
| Commission (bp) | 2.3 | 4.5 | 7.4 | 10.2 | | | | |
| **All-in Yield** | **3.99%** | **3.21%** | **2.73%** | **2.28%** | | | | |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | | | | |
| Hydro One (A/A) | 144.0 | 97.0 | 75.0 | 47.0 | | | | |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | | | | |
| Nova Scotia Power (BBB+ / A(low)) | 148.0 | 103.0 | 83.0 | 68.0 | | | | |
| EPCOR Utilities (BBB+ / A(low)) | 139.0 | 92.0 | 72.0 | 57.0 | | | | |

| Bank Name | TD |
|---|---|
| Date | 9/11/2017 |

| Indicative OPG New Issue Spreads | Current | | | | Week over Week | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year | | | | |
| Benchmark Canada Bond Maturity | 1-Dec-48 | 1-Jun-27 | 1-Jun-22 | 1-Jun-19 | 1-Dec-48 | 1-Jun-27 | 1-Jun-22 | 1-Jun-19 | 1-Dec-48 | 1-Jun-27 | 1-Jun-22 | 1-Jun-19 |
| Benchmark Canada Bond Coupon | 2.75% | 1.00% | 2.75% | 3.75% | 2.75% | 1.00% | 2.75% | 3.75% | 2.75% | 1.00% | 2.75% | 3.75% |
| Benchmark Yield | 2.38% | 2.03% | 1.75% | 1.54% | 0.11% | 0.17% | 0.23% | 0.20% | 2.27% | 1.86% | 1.52% | 1.35% |
| Curve Adjustment (bp) | 0 | 1.5 | 0.2 | 1.5 | 0.0 | -0.1 | -5.0 | -0.1 | 0 | 1.6 | 5.3 | 1.6 |
| Spread to GoC Curve (bp) | 159 | 112 | 90 | 62 | 5 | 1 | 1 | -1 | 154 | 111 | 89 | 63 |
| Re-Offered Yield | 3.97% | 3.16% | 2.65% | 2.17% | 0.16% | 0.18% | 0.19% | 0.18% | 3.81% | 2.99% | 2.46% | 1.99% |
| Commission (bp) | 2.3 | 4.5 | 7.4 | 10.2 | 0.0 | 0.0 | 0.0 | 0.0 | 2.3 | 4.4 | 7.3 | 10.2 |
| **All-in Yield** | **3.99%** | **3.21%** | **2.73%** | **2.28%** | **0.16%** | **0.18%** | **0.19%** | **0.18%** | **3.84%** | **3.03%** | **2.53%** | **2.09%** |

| Primary Comparable (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | | Current | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Hydro One (A/A) | 144.0 | 97.0 | 75.0 | 47.0 | 5.0 | 1.0 | 1.0 | (1.0) | 139.0 | 96.0 | 74.0 | 48.0 |

| Other Comparables (S&P/Moody's/ DBRS) | Current | | | | Week over Week | | | | Current | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Spread to GoC Curve (bp) | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year | 30-year | 10-year | 5-year | 2-year |
| Nova Scotia Power (BBB+ / A(low)) | 148.0 | 103.0 | 83.0 | 68.0 | 4.0 | - | - | - | 144.0 | 103.0 | 83.0 | 68.0 |
| EPCOR Utilities (BBB+ / A(low)) | 139.0 | 92.0 | 72.0 | 57.0 | 4.0 | - | - | - | 135.0 | 92.0 | 72.0 | 57.0 |

Patrick Scace | Greg McDonald | Andrew Becker | Tennyson Cho | Emma Hyatt
(416) 308-2172 | (416) 308-3027 | (416) 308-4135 | (416) 944-5321 | (416) 307-0131